

FAIR INSURANCE PRACTICES ACT

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 372

TO PROMOTE INTERSTATE COMMERCE BY PROHIBITING DISCRIMINATION IN THE WRITING AND SELLING OF INSURANCE CONTRACTS, AND FOR OTHER PURPOSES

APRIL 12, 25, AND MAY 19, 1983

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FAIR PRACTICES INSURANCE ACT

TUESDAY, APRIL 12, 1983

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The committee met, pursuant to notice, at 9:35 a.m., in room 253, Russell Senate Office Building, Hon. Bob Packwood (chairman of the committee) presiding.

Staff members assigned to these hearings: Cynthia Douglass, staff counsel; and Amy Bondurant, minority staff counsel.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. The committee will come to order, please.

This morning the committee begins hearings on S. 372, the Fair Insurance Practices Act, which prohibits discrimination in insurance on the basis of sex, race, color, religion, and national origin.

Senator Hatfield, Senator Hollings and I introduced S. 372 on February 1 of this year, and we will be inserting in the Congressional Record today a list of additional cosponsors. The committee will hold 3 days of hearings on this bill. The next 2 days are scheduled for April 25 and May 19. We will hear from a great variety of organizations and persons with expertise and interest in this legislation.

Today we will hear from Senator Hatfield and a number of constituent groups, from officials in city and State government. On April 25 we will hear from a labor panel, an automobile insurance panel, and a health and disability insurance panel. And on May 19 we will hear from a life insurance and pension panel, several actuaries, and the National Governors Association.

These hearings are structured to give the committee the opportunity to fully understand the issues involved and assess the bill's impact on various segments of our society.

Each witness' entire statement will be placed in the record. Therefore, I will give each witness 5 minutes to summarize his or her statement.

I ask unanimous consent that Senator Hollings' statement be inserted in the record in full.

[The bill and statement follow:]

98TH CONGRESS
1ST SESSION

S. 372

To promote interstate commerce by prohibiting discrimination in the writing and selling of insurance contracts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 1 (legislative day, JANUARY 25), 1983

Mr. HATFIELD (for himself, Mr. PACKWOOD, and Mr. HOLLINGS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To promote interstate commerce by prohibiting discrimination in the writing and selling of insurance contracts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Fair Insurance Practices
4 Act".

5

FINDINGS AND POLICY

6 SEC. 2. (a) The Congress finds that discrimination based
7 on race, color, religion, sex, or national origin, by any insurer
8 which is engaged in commerce or whose activities affect com-
9 merce, in connection with any application for, or the terms,

1 conditions, rates, benefits, or requirements of insurance poli-
2 cies and contracts (including annuity or pension contracts) (1)
3 burdens the commerce of the Nation, (2) impairs the
4 economic welfare of large numbers of consumers who rely on
5 the protection of such policies and contracts, (3) constitutes
6 an unfair trade practice which adversely affects commerce,
7 and (4) makes it difficult for employers to comply with Feder-
8 al laws prohibiting such discrimination against their employ-
9 ees.

10 (b) The Congress therefore declares that it is the policy
11 of the United States that no insurer shall, on the basis of the
12 race, color, religion, sex, or national origin of any individual
13 or group of persons, (1) refuse to make insurance available to
14 any applicant for insurance, (2) with respect to insurance
15 contracts to which this Act applies, treat any such applicant
16 or insured differently than any other applicant or insured
17 with respect to the terms, conditions, rates, benefits, or re-
18 quirements of any such insurance contract, or (3) commit any
19 other discriminatory action prohibited by this Act. It is fur-
20 ther the policy of the Congress that this Act shall not affect
21 the responsibility and authority of States to regulate the busi-
22 ness of insurance, or any regulation or order of any State
23 agency concerning or applicable to the business of insurance,
24 if such regulation or order is consistent with and does not
25 prevent compliance with this Act.

1

DEFINITIONS

2

SEC. 3. For purposes of this Act, the term—

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(1) "commerce" means trade, traffic, commerce, transportation, transmission, or communication between a place in a State and any place outside thereof; or within the District of Columbia or a territory or possession of the United States; or between points in the same State but through a point outside thereof;

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(2) "discriminatory action" means action by an insurer which is unlawful under this Act and contrary to the policy stated in section 2 of this Act;

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(3) "insurance" means any arrangement (whether by contract, policy, binder, reinsurance, or otherwise) whereby an insurer (including any governmental agency) will provide benefits (whether by reimbursement, periodic or lump-sum payments, or otherwise) in case specified events occur in connection with death, disability, medical conditions, attainment of specified age, retirement from employment, economic loss, theft, or other events customarily dealt with in insurance policies and contracts (including annuity or pension contracts) relating to life, accident and casualty, theft, retirement, liability, health, disability, or economic loss;

(4) "insured" means any person who is insured under or is or may be an applicant for insurance under

1 a contract of insurance issued or to be issued by the
2 insurer;

3 (5) "insurer" means any person (A) who provides
4 insurance to others or otherwise engages in the busi-
5 ness of insurance and (B) whose activities (i) affect
6 commerce, (ii) utilize facilities of the United States
7 Postal Service, (iii) utilize any facilities used in com-
8 merce by any person, or (iv) result in a discriminatory
9 action carried on under color of any law, statute, ordi-
10 nance, or regulation, or required, permitted, or sanc-
11 tioned, or supported with funds provided, by the United
12 States, any State or political subdivision, or any
13 agency or officer thereof; the term includes such per-
14 son's agent;

15 (6) "activities affect commerce" means any activi-
16 ty which directly or indirectly relates to, impinges
17 upon, or involves any activity in commerce, and in-
18 cludes any governmental activity;

19 (7) "person" includes one or more individuals,
20 governments, and agencies of the United States or of
21 any State or political subdivision thereof, labor unions,
22 partnerships, associations, corporations, legal repre-
23 sentatives, mutual companies, joint ventures, joint
24 stock companies, societies, trusts, unincorporated orga-

1 nizations, trustees, trustees in bankruptcy, receivers,
2 and fiduciaries;

3 (8) "sex" means the gender of the insured and in-
4 cludes pregnancy, childbirth, or related medical condi-
5 tions of a female insured, except that nothing in this
6 Act shall be deemed to amend section 701(k) of the
7 Civil Rights Act of 1964 (42 U.S.C. 2000e(k)); and

8 (9) "State" includes a State of the United States,
9 the District of Columbia, the Commonwealth of Puerto
10 Rico, and any territory or possession of the United
11 States.

12 UNLAWFUL DISCRIMINATORY ACTIONS

13 SEC. 4. (a) It shall be unlawful discriminatory action for
14 any insurer, because of the race, color, religion, sex, or na-
15 tional origin of any person or any group of persons, to do any
16 of the following with respect to any person who after the
17 effective date of this Act applies or may apply for a contract
18 of insurance or is an insured under a contract of insurance
19 made after the effective date of this Act—

20 (1) to refuse to make, or to refuse to negotiate, or
21 otherwise make unavailable or deny, or delay receiving
22 and processing an application for, a contract of insur-
23 ance of the type ordinarily made by such insurer; or

24 (2) to treat such applicant or insured differently
25 than the insurer treats or would treat any other appli-

1 cant or insured with respect to the terms, conditions,
2 rates, benefits, or requirements of such insurance con-
3 tract.

4 (b) It shall be an unlawful discriminatory action for any
5 insurer—

6 (1) to utilize any statistical table (whether of mor-
7 tality, life expectancy, morbidity, disability, disability
8 termination, or losses) or any other statistical compila-
9 tion as a basis for any action which is contrary to this
10 section;

11 (2) to discriminate in any manner against any
12 person because such person has opposed any practice
13 made unlawful by this Act or because such person has
14 made a charge, testified, assisted, or participated in
15 any manner in an investigation, proceeding, hearing, or
16 litigation under this Act; or

17 (3) to make, print, or publish, or cause to be
18 made, printed, or published, any notice, statement, or
19 advertisement relating to insurance coverage that such
20 insurer provides or will provide, indicating any prefer-
21 ence, limitation, specification, or discrimination based
22 on the race, color, religion, sex, or national origin of
23 any person or group of persons, or an intention to
24 make any such preference, limitation, specification, or
25 discrimination.

1 (c) With respect to all contracts of insurance existing on
2 the date this Act becomes effective—

3 (1) it shall be an unlawful discriminatory action
4 for any insurer after the effective date of this Act—

5 (A) to charge or collect premium payments
6 or contributions which become due after the effec-
7 tive date of this Act; or

8 (B) to determine the amount of or to pay to
9 any insured or other beneficiary under an insur-
10 ance, annuity, or pension contract any periodic or
11 lump-sum payment after the effective date of this
12 Act;

13 if such charge, collection, determination, or payment, is
14 based, directly or indirectly, either on race, color, reli-
15 gion, sex, or national origin of any person or group of
16 persons, or on any statistical table whose use would, if
17 applied to contracts made after the effective date of
18 this Act, violate any provision of this section; and

19 (2) the insurer may modify the premium and con-
20 tribution rates and may increase but not decrease the
21 periodic and lump-sum payments under such existing
22 contracts insofar as they are due after the effective
23 date of this Act, if clearly necessary to comply with
24 the nondiscrimination requirements of this Act (and if
25 the State agency having jurisdiction to regulate the

1 business of insurance concurs that the modification re-
2 quested by the insurer is clearly necessary to comply
3 with such requirements and authorizes such modifica-
4 tion), but such insurer need not refund any portion of
5 the premiums and contributions which were payable to
6 the insurer prior to the effective date of this Act nor
7 pay any additional amounts for the benefits which were
8 payable by the insurer prior to the effective date of this
9 Act.

10 (d) Nothing in this Act shall be deemed to prevent an
11 insurer who regularly provides insurance coverage solely to
12 persons of a single religious affiliation from continuing to pro-
13 vide insurance solely to persons of that religious affiliation.

14 STATE OR LOCAL ENFORCEMENT PRIOR TO JUDICIAL
15 ENFORCEMENT UNDER THIS ACT

16 SEC. 5. (a) If an alleged discriminatory action occurs in
17 a State, or political subdivision thereof, which has a State or
18 local law prohibiting such discriminatory action and establish-
19 ing or authorizing a State or local authority to grant or seek
20 relief from such discriminatory action or to institute criminal
21 proceedings with respect to such action upon receiving writ-
22 ten notice of such action within one hundred and eighty days
23 after the alleged discriminatory action occurs, the provisions
24 of this section shall apply.

1 (b) It is the purpose of this Act to accord to State and
2 local authorities the primary opportunity to enforce the State
3 or local laws prohibiting such discriminatory action before an
4 aggrieved person may invoke the judicial remedy provided
5 under section 6 of this Act. Therefore, no suit shall be filed
6 under such section before the expiration of sixty days after
7 the State or local authority has received the notice specified
8 in subsection (a) of this section, unless any proceeding begun
9 by the State or local authority after such notice has been
10 earlier terminated (except that such sixty-day periods shall be
11 one hundred and twenty days during the first year after the
12 effective date of such State or local law). The notice of the
13 alleged discriminatory action to commence such State or
14 local proceedings shall be filed within the time prescribed by
15 such State or local law, provided such prescribed time is not
16 less than one hundred and eighty days after the alleged dis-
17 criminatory action occurred. If any State or local authority
18 imposes any requirement for the commencement of such pro-
19 ceedings other than a requirement that a written and signed
20 statement of the facts upon which the charge of the alleged
21 discriminatory action is based be filed within one hundred and
22 eighty days after the alleged discriminatory action occurred,
23 the proceeding shall be deemed to have been commenced for
24 the purposes of this section at the time such statement is filed
25 with the appropriate State or local authority. Depositing such

1 statement in the United States mail by certified or registered
2 mail addressed to the State or local agency shall be equiva-
3 lent to such filing. Where the alleged discriminatory action is
4 continuing in character, the one hundred and eighty days
5 shall be computed from the last day on which such continuing
6 discriminatory action occurred.

7 . CIVIL ACTION BY OR ON BEHALF OF AGGRIEVED PERSON

8 SEC. 6. If the State or political subdivision thereof in
9 which the alleged discriminatory action occurred does not
10 have a State or local law which complies with section 5(a) of
11 this Act, or if the State or local authority has failed within
12 sixty days after receiving the notice prescribed in section 5 of
13 this Act to either (i) institute and diligently prosecute a pro-
14 ceeding pursuant to such section, or (ii) enter into a concilia-
15 tion agreement to which the aggrieved person is a party, a
16 civil action against the insurer may be brought by or on
17 behalf of such person. Such civil action may be instituted in
18 any State court having jurisdiction under State law or in a
19 United States district court having jurisdiction under section
20 8 of this Act. No suit under this section may be filed after the
21 expiration of one hundred and eighty days following the al-
22 leged discriminatory action, except that in a case where the
23 aggrieved person has instituted proceedings with a State or
24 local authority pursuant to section 5 of this Act and such
25 authority either has notified the aggrieved person that the

1 proceedings under the State or local law have been terminat-
2 ed, or has failed to comply with clauses (i) or (ii) of this sec-
3 tion within sixty days after receiving the notice prescribed in
4 section 5 of this Act, the suit under this section may be filed
5 not later than ninety days thereafter, or one hundred and
6 eighty days after the occurrence of the alleged discriminatory
7 action, whichever is later. Where the alleged discriminatory
8 action is continuing in character, the one hundred and eighty
9 days shall be computed from the last day on which such dis-
10 criminatory action occurred. Upon the complainant's applica-
11 tion and in such circumstances as the court may deem just,
12 the court may appoint an attorney for such complainant and
13 may authorize the commencement of the action without the
14 payment of fees, costs, or security. Upon request of the State
15 or local authority or any party to the suit, the court may stay
16 further proceedings for not more than sixty days pending the
17 termination of State or local proceedings described in section
18 5 of this Act.

19 CIVIL ACTION BY THE ATTORNEY GENERAL INVOLVING
20 ISSUES OF GENERAL PUBLIC IMPORTANCE

21 SEC. 7. Whenever the Attorney General has reasonable
22 cause to believe that any person or group of persons is en-
23 gaged in a pattern or practice of resistance to the full enjoy-
24 ment of any of the rights granted by this Act, or that any
25 group of persons has been denied any of the rights granted by

1 this Act, and such denial raises an issue of general public
 2 importance, the Attorney General may bring a civil action in
 3 any United States district court having jurisdiction under sec-
 4 tion 8 of this Act, by filing with it a complaint setting forth
 5 the facts and requesting such relief, including an application
 6 for a permanent or temporary injunction, restraining order, or
 7 other order against the person or persons responsible for such
 8 pattern or practice or denial of rights, as the Attorney Gener-
 9 al considers necessary to insure the full enjoyment of the
 10 rights granted by this Act.

11 JURISDICTION

12 SEC. 8. Any civil action under this Act instituted in a
 13 United States district court shall be brought, without regard
 14 to the amount in controversy, in the United States district
 15 court of any judicial district in the State in which (1) the
 16 alleged discriminatory action occurred, (2) the insurer's prin-
 17 cipal office is located, (3) the insurer maintains and adminis-
 18 ters records relevant to the alleged discriminatory action, (4)
 19 the insurer resides or is located, (5) the insurer is incorporat-
 20 ed or has a designated agent for service of process, or (6) the
 21 insurer transacts business. The case shall be heard at the
 22 earliest practicable time and expedited in every way. If no
 23 judge is promptly available to hear and decide the case, the
 24 chief judge or acting chief judge of the district shall so certify
 25 to the chief judge of the circuit who shall promptly designate

1 a district or circuit judge of the circuit to hear and determine
2 the case.

3 JUDICIAL RELIEF

4 SEC. 9. (a) If the court determines that the insurer,
5 whether public or private, has committed a discriminatory
6 action, the court may—

7 (1) enjoin the respondent from committing any
8 discriminatory action in the future;

9 (2) order the respondent to amend the insurance
10 contract to conform with the requirements of this Act;

11 (3) require the respondent to reimburse the ag-
12 grievied person for all actual damages sustained by
13 such person, either in an individual capacity or as a
14 member of a class, including reimbursement for excess
15 rates paid or inadequate benefits received as a result of
16 the discriminatory action;

17 (4) require the respondent to pay punitive dam-
18 ages, in addition to the actual damages under para-
19 graph (3) of this subsection, of not more than \$25,000
20 for each individual plaintiff and not more than
21 \$800,000 in the case of a class action;

22 (5) allow the person aggrieved such reasonable at-
23 torney fees as part of the costs assessed against the re-
24 spondent, as the court in its discretion deems proper;

1 (6) order such other equitable relief, including
2 temporary or preliminary relief pending final disposition
3 of the case, as the court may deem appropriate; and

4 (7) utilize the sanction of contempt to enforce its
5 orders under this section.

6 (b) In determining the amount of punitive damages
7 under subsection (a)(4) of this section, the court shall con-
8 sider, among other relevant factors, the amount of actual
9 damages awarded, the frequency and persistence of the re-
10 spondent's failure to comply with the requirements of this
11 Act, the respondent's resources, the number of persons af-
12 fected, the extent to which the respondent was enriched
13 through its discriminatory action, and the extent to which the
14 respondent's failure to comply was intentional.

15 INAPPLICABILITY

16 SEC. 10. Nothing in this Act shall be deemed to—

17 (1) modify any provision of the Social Security
18 Act;

19 (2) modify any provision of any law or Executive
20 order prohibiting discrimination in employment on the
21 basis of an individual's race, color, religion, sex, or na-
22 tional origin; or of any rule, regulation, order or agree-
23 ment under such law or Executive order; or

24 (3) exempt or relieve any person from any lia-
25 bility, duty, penalty, or punishment under any present

1 or future law of any State or political subdivision
2 thereof, other than any such law which purports to re-
3 quire or permit the doing of any act which would be a
4 discriminatory action under this Act.

5 **EFFECTIVE DATE**

6 **SEC. 11.** This Act shall become effective on the
7 ninetieth day after the date of the enactment of this Act.

OPENING STATEMENT BY SENATOR HOLLINGS

Today, on April 25 and again on May 19, 1983, the Senate Commerce Committee will conduct hearings on S. 372, the Fair Insurance Practices Act. I am pleased to be an original cosponsor of S. 372, which was introduced on February 1, 1983.

The purpose of this legislation is to prohibit discrimination in the insurance marketplace. The legislation makes it an unlawful discriminatory action for an insurer, because of race, color, religion, sex, or national origin, to refuse to make or negotiate a contract of insurance of the type ordinarily made by the insurer or to treat an applicant or insured differently than the insurer treats others with respect to the terms, conditions, rates, benefits or requirements of an insurance contract.

Fundamental to civil rights policy in the United States is that no individual be treated differently because of his or her membership in a racial, sexual, religious or ethnic group. Certainly serious efforts have been made in combating discrimination in our society over the past decade. Laws have been enacted such as Title VII of the Civil Rights Act of 1964, prohibiting discrimination in employment; Title VIII of the Civil Rights Act of 1968, prohibiting discrimination in housing; and the Equal Credit Opportunity Act, prohibiting discrimination in consumer credit and finance. S. 372 follows the pattern of these present laws to prohibit discrimination in insurance and annuities.

Testimony before the Senate Commerce Committee on July 15, 1982 presented evidence that discrimination on the basis of sex in insurance does exist. For example, young men pay higher premiums for auto insurance than young women. Men must pay higher premiums for the same amount of life insurance than do women. Women receive lower monthly retirement benefits than men who have paid identical premiums. Premium rates in disability insurance are sometimes much higher for women than for men carrying identical coverage.

Many courts have rejected the argument that sex discrimination in insurance can be justified. For example, the Supreme Court, in *Los Angeles v. Manhart*, has already held that it is illegal sex discrimination for an employer to require women to contribute more to their pensions than men because some of them will live longer than most of their male colleagues. The Supreme Court decision, however, was based on Title VII of the 1964 Civil Rights Act which applies only to employment-related insurance and annuity policies. S. 372 would extend this policy to the remaining number of annuities which are not employment related.

The Fair Insurance Practices Act is an important step in ensuring both equal rights and economic equity for women. I look forward to these hearings on a very important issue. I am particularly interested in the testimony on how the bill will be implemented and hope to see enactment of fair and balanced legislation.

The CHAIRMAN. Let me say just one more thing before I call upon my colleague from Oregon, Senator Hatfield, to open our hearings as the first witness.

There is no one that I know of in this room, probably no one in this country, who argues with the actuarial statistics today. If you take all of the women in this country today, and compare them with all the men in this country today, women live longer.

This may not have been true 100 years ago. It may not be true 50 years from today. It is not true in some of the third world countries today. Clearly the phenomenon of living longer is not a biological phenomenon or it would exist throughout the world.

So I would hope that all of those who are actuaries or depend upon those tables for their arguments understand that I think Senator Hatfield, Senator Hollings and I, are not saying that your statistics of today are wrong. What we are saying is that henceforth it is no longer a valid policy in this country to lump all the women together and say that because on the average women live a few years longer, all women will therefore be subject to the same insurance premiums and benefits.

The day of judging people in this country as a class rather than as individuals I hope is coming to an end. Therefore, all we are saying in this bill is not that your tables are wrong if you take men

and women as a class. We are simply saying that it is no longer decent and will no longer be the policy of this country to judge people other than on their individual merits.

I would now like to call upon my close friend and esteemed colleague, the senior Senator from the State of Oregon, Mark Hatfield. Good morning, Mark.

STATEMENT OF HON. MARK HATFIELD, U.S. SENATOR FROM OREGON

Senator HATFIELD. Good morning. Mr. Chairman, I am delighted to join with you in the presentation of this bill. Over the years through our service in the State of Oregon and now together here in the Senate, we have shared a common commitment to civil rights. As you recall, we have fought many a battle together on this principle.

I recall specifically when we introduced the first migratory labor legislation in the United States, and how all the agricultural and other groups considered it to be unwise and fought it as unworkable. And yet Oregon again set the stage to become a pioneer in removing a lot of the discrimination that had grown up over the years relating to migratory laborers.

You and I have joined in providing legislation to deal with those areas of discrimination in public accommodations, education, employment, and credit, and in housing. But unfortunately, in the abstract continuation of discriminatory policies in insurance is discouraging, but in its practical ramifications it is even more distressing. Denial of access to insurance at fair rates has had severe economic consequences.

I need not recite the litany that is so well known to you and other members of this committee, that in the last 50 years the number of families headed by women has tripled, and the economic plight of today's American woman is even greater than it was a few decades ago. One out of three of these families which depend on women for their sole source of support live below the poverty line.

Today women are 42 percent of the labor force, yet they comprise over 66 percent of the people living in poverty. Older women are the fastest growing poverty group in America, and women in general earn only 59 percent of what men earn.

I think we must recognize that insurance for many of these individuals, as single heads of households, as widows, as low wage earners, is no longer a luxury but an economic necessity.

This bill simply demands of the insurance industry preservation of the same principles of nondiscrimination which we have stated as a matter of public policy in areas of housing, credit, education, and employment. I fail to understand on what grounds the insurance industry can label as unacceptable discrimination against an individual's race, color, religion, or national origin, while at the same time claiming that discrimination based on sex is an acceptable practice.

What is different about a person's gender that would not apply to other immutable characteristics such as these? It is clear that mortality rates of those of the Mormon faith are substantially

lower than those of the general population. Yet the insurance industry does not use religion as a classification in rates. The mortality rate of white males as a group is lower than that of black males as a group. Yet the insurance industry does not use national origin as a classification in rates.

I recognize that this concept of using sex as a classifier is vigorously opposed by the industry on the basis that it is not unfair discrimination, that the principle of insurance is dividing individuals into groups. I do not agree with that premise, for to divide individuals into groups on the basis of immutable characteristics is truly unfair.

I would like to cite, however, a few examples which go beyond that philosophical dispute of unfairness as the industry describes it. Far too often, the insurance community has placed the female in double jeopardy simply because of her sex. Recent investigations have demonstrated that some employer-sponsored life insurance plans charge women more for pension coverage on the assumption that they would live longer, but charge them as much as men for life insurance. They thus have ignored sex difference when it would have helped women.

Some companies make a smaller allowance for sex differences in life insurance, where the difference helps women, than in annuities, where the difference helps men. That to me is double jeopardy.

It is well known that many disability policies do not include maternity. Yet maternity is included in the justification for higher rates cited by some of those same companies. That is double jeopardy.

Actuarial statistics, when available, are used to justify higher rates for women in various insurance policies. When no actuarial statistics on women are available for particular categories of insurance, such as disability insurance for a female physician, higher rates are still charged, on the basis that no studies have yet been done. That is double jeopardy.

Behavioral classifications, such as smoking or obesity, are more clearly related to mortality than sex or race. Yet gender is given greater weight as a casualty factor in death than characteristics over which individuals have some amount of choice. That again is double jeopardy.

In my view, Mr. Chairman, these problem areas, as well as others, have been inadequately addressed, if not ignored, by the insurance industry. In numerous personal discussions with members of the insurance community, as well as examinations of past hearings which have been held in Congress on this issue, I have failed to hear a satisfactory answer to claims such as the ones I have just cited.

I understand some members of the insurance community are willing to accept the concept of sex neutrality if it is not applied to accrued benefits and existing policies. I want to express my support for the efforts being made to negotiate on this legislation. It is my sincere hope that through the hearing process we may be able to reach an agreement on legislation which will help alleviate the inequities of current insurance policies.

Mr. Chairman and members of the committee, I regret to say that the failure of the equal rights amendment makes it even more incumbent on Congress to act with haste on this legislation. I commend you, Mr. Chairman, for calling this hearing today and for educating the public on the economic inequities created by such policies, and for reminding the insurance community that this issue will not go away until it is fairly addressed.

I wish that this Federal legislation was not necessary. However, action by the States has taken too long and the consequences for women particularly are far too great to postpone this action any longer. I think it is in keeping with the President, who has urged those who supported the ERA, such as you and I have, and cosponsored it many times, to move on an individual case-by-case basis. I think therefore this is in keeping with the present administration's proposal that we deal with these discrimination problems through legislation, at least until we can get a constitutional amendment.

The CHAIRMAN. Mark, you have generously made reference to how many battles we have been through side by side. It does go back a good many years.

When Senator Hatfield first ran for the legislature in 1950, I was his college chairman in a town that I lived in. He was my teacher. We have been involved in more battles together than any other person I have been associated with. Even if I live out the mortality tables I will probably not have this experience with anybody else.

I remember in the legislature when we finally passed our fair employment law that said you could not discriminate on the basis of sex in the early sixties, and that was still a battle 20 years ago, even then. You made reference to the equal rights amendment. We are going to have some testimony from people today who have said for a number of years that we do not need an equal rights amendment, we can do everything by statute. But they are going to testify against the statute in addition.

You cannot have it both ways. You and I have heard people say the ERA is a State issue and defeat it here, then go to the legislatures and lobby against it in the legislature. I think we will have some of that here.

I have no questions, and I am deeply appreciative of your long-standing cosponsorship with me on this bill. I hate to use the expression "the light at the end of the tunnel," but hopefully we are far enough away from the incubus of that expression that it can now be taken validly. I think I do see the light at the end of the tunnel, and we will pass this bill this year.

Senator HATFIELD. Thanks to you.

The CHAIRMAN. Thank you very much, Senator.

Next we will take Mr. T. Timothy Ryan, Solicitor for the U.S. Department of Labor. Mr. Ryan.

STATEMENT OF T. TIMOTHY RYAN, JR., SOLICITOR, U.S. DEPARTMENT OF LABOR, ACCOMPANIED BY DR. PEGGY CONNERTON, SENIOR ECONOMIST; AND DIANE BURKLEY, SPECIAL ASSISTANT TO THE SOLICITOR

Mr. RYAN. Good morning, Mr. Chairman.

The CHAIRMAN. Go right ahead.

Mr. RYAN. Mr. Chairman and members of the committee:

Thank you very much for giving us the opportunity to appear before you today to discuss the issue of sex equity in insurance, and specifically in the pension field.

I am accompanied by Diane Burkley to my left, who serves as my special assistant, and Dr. Peggy Connerton, seated to my right, a senior economist at the Department of Labor, both of whom have done extensive research on this subject.

We testified on this issue earlier this year before the House of Representatives Subcommittee on Commerce, Transportation and Tourism. At that time we presented a rather lengthy statement which fully set out the administration's activities and thoughts on sex equity and insurance.

Due to the committee's time constraints, I am not able to go into as much detail at this time. I would, however, request that that prepared statement be included in the record of this hearing at the conclusion of my presentation, as well as the accompanying study prepared by Dr. Connerton.

The CHAIRMAN. Without objection.

Mr. RYAN. Mr. Chairman, this administration is dedicated to insuring fair and equitable treatment for women, and we are seeking to identify and remedy those features of Federal law and policy which treat women or men unfairly. As you may remember, in his January state of the Union message President Reagan specifically stated that any inequities facing women in the field of pensions should be identified and addressed by legislation.

The Government has been involved in the pension equity question for more than a decade. Most recently, this administration's Cabinet Council on Legal Policy, chaired by the Attorney General, established a Working Group on Equal Pension Benefits which I was asked to head. One result of our deliberation was that the Government filed a memorandum in the Supreme Court in *TIAA-CREF v. Spirt*. The Government took the position in that case that the employer in question violated title VII of the Civil Rights Act by its use of sex-based actuarial tables resulting in unequal pension benefits to males and females.

We also have held extensive discussions on how legislation should be shaped to address the issue of pension equity. This is an extremely complex matter which does not lend itself to easy answers or approaches. There are many factors involved—each in themselves presenting many complicated variables—which need to be addressed severally and jointly.

We first attempted to determine under what circumstances men and women receive unequal periodic or lump sum payments from pension plans. I would direct your attention to our February testimony for a complete discussion of this matter, so that you can understand why such payments may be greater for men under some circumstances than for women under others.

Having defined the problems, the working group has been examining numerous options to address them. We have found there are three basic questions that need to be considered in selecting a solution:

¹ The study has been retained in the committee files.

One, who will be covered by remedial legislation?

Two, how will the new nondiscriminatory level of benefits be established?

And three, what benefits will be affected by the nondiscriminatory requirements?

With these considerations in mind, we have focused on three possible options for implementing an equal benefits requirement. The chart which is attached to my written statement illustrates these options and how they may be varied. For your assistance, Mr. Chairman, we have a blown-up version here.

The first option is to top up any future payment to the level of the sex receiving the larger periodic or lump sum payment. This may be varied by applying it either to all retirees or only to future retirees. We interpret S. 372 to take the first of these approaches.

The second alternative would be to substitute a sex-neutral approach for topping up. Total future payments would still have to be equalized, but an intermediate benefit level would be set. Again, this could be applied to all retirees or limited to future retirees.

Third, equalization could be mandated only for benefits accruing in the future through the use of sex-neutral tables. This option would only affect future retirees.

Needless to say, Mr. Chairman, the economic ramifications of these options vary greatly. Dr. Connerton has conducted a study of the short-term costs of various measures for equalizing pension benefits. It estimates that the annual costs of plans under the S. 372 approach would be \$1 to \$1.7 billion.

On the other end of the spectrum, \$85 to \$93 million a year would be the cost under the third alternative, which would use sex-neutral tables for only future accrued benefits. The study also shows, as demonstrated on the attached chart, that most of the newly mandated benefits will go to male employees, with a small percentage going to their widows.

Mr. Chairman, all of the options and their variations as well as costs must be considered in depth, as the administration is now doing, before final decisions on the appropriate approach are made. The hearings before this committee and in the House of Representatives are extremely useful in fleshing out the problems and possible solutions. Decisions by the courts under title VII of the Civil Rights Act also provide guidance, although unfortunately to date they have not been a model of clarity.

The Supreme Court may shed some light on the problem when it addresses its decision in *Arizona v. Norris* this term. That case presents the question of whether title VII permits employers to provide the employees the option of selecting one of several pension forms, some providing equal benefits and some providing unequal payments comparable to those available on the open market.

While the administration is actively involved in a review of pension equity issues, we have not to date completed a thorough analysis of other insurance areas—life, accident and casualty, theft, liability, health, disability, or economic loss. Our study to date, however, suggests that there are many unanswered questions, including what the economic impact of a sex-neutral approach will be.

Some have indicated that sudden changes in these areas might actually increase the costs of insurance for women. Any such

changes should be carefully scrutinized to assure that they would not unfairly operate to the detriment of women.

If we have learned nothing else from our involvement with the pension question, Mr. Chairman, we have learned that an in-depth review is not only advisable but it is essential. Many of our findings relating to disparate pension benefits were exactly the opposite of what we expected to find. Therefore, the administration intends to complete a study of the problems women face in these and other areas of insurance.

Mr. Chairman, this concludes my prepared statement. We will be pleased to answer any questions that you may have or Senator Lautenberg may have. Thank you for the opportunity to appear.

[The chart referred to follows:]

SHORT RUN ECONOMIC IMPACT

[In millions of dollars]

	Annual cost to plans	Annual increase in female employees' benefits	Annual increase in male employees' benefits
I. Topping up total benefits:			
(a) All retirees	1,195-1,663	310-611	885-1,052
(b) Future retirees	817-1,260	249-583	568-717
II. Sex-neutral tables for total benefits:			
(a) All retirees	542-585	23-28	512-550
(b) Future retirees	163-181	-38-41	194-215
III. Sex-neutral tables for future accrued benefits:			
(a) All retirees			
(b) Future retirees	85-93	-20-23	102-112

The CHAIRMAN. Mr. Ryan, obviously I was delighted with the brief that the administration filed in the *TIAA-CREF* case. Were you a part of that brief at all? Did you have any hand in it, in the thinking process that went into its preparation?

Mr. RYAN. Yes, Mr. Chairman. In fact, I was a signatory to the brief.

The CHAIRMAN. Explain to me the thinking of the administration that led to this laudable conclusion?

Mr. RYAN. The process might be easier to explain than how the actual results were accomplished. The Cabinet Council on Legal Policy was asked to look at this entire question. We started looking not only at the legal issue, but also at the economic aspects.

During our deliberations on the legislative and regulatory front, we were presented with an opportunity in *TIAA-CREF v. Spirt* to announce an administration position vis-a-vis the facts of that case and title VII. As you know, Mr. Chairman, the decisions on whether to file or not to file a brief and the position to be taken before the Supreme Court are lodged primarily with the Solicitor General of the United States. The Solicitor General asked that the Cabinet Council provide him with our input.

We did that. We also coordinated that position with the EEOC and the Civil Rights Division of the Justice Department. I think it is safe to say that the brief reflects the combined views of the Solicitor General, the Department of Labor, the EEOC, and the Civil Rights Division.

The CHAIRMAN. Did you reach your conclusion on the basis that title VII precluded classification by gender, and therefore you are going to defend the act, or did you reach your conclusion on the basis that classification by gender is wrong in and of itself and therefore you entered the case?

Mr. RYAN. We addressed the issue of what should be said in our memorandum with a review of title VII and title VII standards. That was the statute that was before the Court.

The CHAIRMAN. But you had reached the conclusion that title VII said you cannot discriminate on the basis of gender tables, or else you would not have entered, I assume?

Mr. RYAN. I think the full discussion of our testimony in the House would serve us well now. At the time that we were trying to make a decision on a *Spirit* filing, we were simultaneously looking at the regulatory and legislative aspects. It was clear to us in the pension area and generally in this whole area of sex equity and insurance, that there is a tension that is created between pension considerations and civil rights principles.

It is especially critical in the pension area, where we have Federal legislation not only dealing with pension plans—the ERISA statute—but also Federal statutes dealing with individual rights and protections, in this case title VII. In the pension area we are dealing with group concepts. As you no doubt realize, the pension area is really a reflection of the whole insurance picture in the country, which combines the insurance practices and trust law. We measured the situation we found as far as the group concepts in the pension area and matched that against the requirements of title VII, which is based on the individual. We saw that a tension existed.

We dealt with that tension in our filing in the *Spirit* brief. We were dealing with individual rights. And we decided that in that case the actions taken by TIAA-CREF and Long Island University were violative of title VII.

The CHAIRMAN. In very simple language, does that mean you read title VII to say that TIAA-CREF and Long Island University could not discriminate because of sex?

Mr. RYAN. That is true.

The CHAIRMAN. Would you draw the same conclusion as to premiums?

Mr. RYAN. The question of premiums was not presented.

The CHAIRMAN. No. I know. I am curious whether the administration will come down. I assume you could argue that you could rectify the situation by having equal pensions if you made women pay higher premiums. I am curious what you think title VII does in relation to premiums.

Mr. RYAN. The question of premiums, if you want to look at it as a contribution question, was addressed by the Supreme Court in the *Manhart* case, which is obviously the law of the land. If you are looking at it from a premium question rather than contribution, then I would not be in a position today to give you an opinion of the administration.

The CHAIRMAN. What would have been the position of the administration as to what the law should have been if there was no title

VII? Would you have recommended enacting title VII to reach this conclusion on pensions?

Mr. RYAN. I think that is similar to the question that is now before the Cabinet Council, Senator Packwood. We are now looking at it obviously from more than a title VII point of view. Your bill and H.R. 100 are not employer-based and are not just title VII oriented. I think that is the type of decision that has not been made yet.

The CHAIRMAN. Let me ask one more question.

Senator LAUTENBERG. Please do.

The CHAIRMAN. Let me put it more audibly then. The administration enforcement of a whole variety of civil rights acts has been on the side that you should not enforce them on the basis of class, that you should enforce them on the basis of individual discrimination, or proven individual discrimination. People should be judged on the merits as individuals.

Without giving any argument of whether that is a valid or invalid way to enforce the civil rights laws, does the administration carry that conclusion therefore to the insurance industry, that people should be judged on the basis of their worth as individuals rather than as a class?

Mr. RYAN. Let me limit my response to the question to the pension area, where we have a much better feeling for the impact, economic impact, and the impact on individuals and the other question, which is the nonpension-related insurance areas. We are at a position now, I think, to make a decision in the pension area. We have held up making a decision in the nonpension-related areas so that we can conduct the same type of review we have given pensions.

Once we have made a thorough review of the nonpension-related insurance questions, then I think that we can give you a definitive answer to your question.

The CHAIRMAN. How soon do you think that will be? The reason I ask is that we had hearings in July of 1982 on a similar bill. The administration was not ready to testify then. Nine months have gone by. How soon do you think you will have a position?

Mr. RYAN. The President said in the state of the Union address that we would be in a position to present legislation this year.

The CHAIRMAN. Senator Lautenberg.

Senator LAUTENBERG. Mr. Chairman, if you would like to continue your questioning now, I will pick up when you are finished. That will suit me.

The CHAIRMAN. I have a couple more. Dr. Connerton, if you are the expert on this rather than Mr. Ryan, let me know. The estimated \$1.1 billion to \$1.7 billion cost if we top out, how much of that expense will be to the insurance industry and how much will be to industry-provided self-funded plans where they are not contracting through an insurance company?

Dr. CONNERTON. I do not know precisely how the cost figures are to be apportioned between the insurance industry and self-funded plans. I do know that approximately 56 percent of the participants are covered, currently covered under private defined benefit plans that are self-funded. But exactly how the costs break out I cannot tell you.

The CHAIRMAN. My figures are slightly different from that, but not greatly. The point I wanted to make is that if the insurance industry is going to talk about the total cost of this bill, in fairness and in terms of their interest, they ought to talk about it in terms of cost to them. There has been no overwhelming general employer opposition to this bill, even though, if my figures are accurate, they are going to bear a greater portion of the costs than the insurance companies.

Dr. CONNERTON. That is correct.

The CHAIRMAN. Those are all the questions I have.

Frank.

Senator LAUTENBERG. Mr. Chairman, if I might, I would like to make a brief opening statement.

The CHAIRMAN. We are happy to have it.

Senator LAUTENBERG. I want to congratulate you and, of course, Senator Hatfield and Senator Hollings for taking the lead in the Senate to end discrimination in insurance. I support your effort. I share your goal. When it comes to insurance, people should not be treated differently on the basis of their sex or their race, color, religion, or national origin.

I understand that it can be useful for an insurer to use sex, for example, to define a group, to ascertain the group's average costs and set the rates for group members, but as a matter of social policy, it seems wrong. As a matter of social policy, we should discourage reliance on classifications by sex, race, color, religion, or national origin, regardless of whether or not they may fit conveniently into the averages. They affect individuals, and individuals are often exceptions to the rule. Individuals deserve to be treated fairly, without regard to invidious classifications like sex or race.

That is not to say insurance actuaries will be stymied. I am sure that the industry is resourceful enough to find other useful, convenient, and fair variables by which it can classify insureds, ascertain costs, and set rates.

By way of example, auto insurers can take a closer look, perhaps, at the number of miles driven. This bill would encourage them to do so.

Having said that, I should add that I am concerned by the questions that have been raised about how we ought to go about actually achieving the goal of the bill. These are questions that do not challenge its purpose. They question how we get there, and obviously that is being raised here. I want to hear those questions explored as we are doing, and I am sure at the conclusion of the hearings that are planned we will be able to address any justifiable concerns and still achieve our most important social goal, and that is fairness in insurance.

Mr. CHAIRMAN. Thank you. That will be in the record.

Senator LAUTENBERG. I do have a couple of questions.

The CHAIRMAN. Go right ahead.

Senator LAUTENBERG. Mr. Ryan, I don't think your statement covered how you view compliance with title VII by employer-sponsored pension plans. Could you give me a capsule view of whether you think the law is being observed scrupulously or otherwise?

Mr. RYAN. Senator, it would be tough for me to give you an answer to that question, because it is probably geared more toward

enforcement by the Equal Employment Opportunity Commission. I can say that our review of this entire area indicates that at least on the contribution side, that is, the side that was addressed by the Supreme Court in the *Manhart* case, we have not seen a significant amount of problems over the last couple of years, that is, since this administration has been in.

On the benefits side, it appears that there is quite a bit of confusion.

Senator LAUTENBERG. You said that earlier in your remarks.

Mr. RYAN. Yes, Senator, and I would not be surprised to find that there are employers and certainly insurance companies that do not have a real good grasp on what is expected of them by the Federal Government from a benefits standpoint.

Senator LAUTENBERG. Do you think the legislation is required just for better definition of existing obligations, or is it there to adjust other kinds of social inequity?

Mr. RYAN. The Supreme Court's decision in the *Norris* case is the first opportunity they will have to address the benefits side of this question. It is a two-pronged question. That decision will probably will offer more illumination, and will certainly give you all an indication in this committee and in the Senate of what is necessary and what is not necessary legislatively in the pension area from a title VI standpoint.

The Supreme Court does not have the other insurance-related questions before it.

Senator LAUTENBERG. You see the bill that we are considering here imposing as burdens imposed by title VII. Do you see any other burdens imposed by this legislation?

Mr. RYAN. Again, and I am sorry to duck some parts of your questions, but we have started a process to develop a position on the nonpension-related areas, and because it is interagency, and because we have now 22 different departments and agencies of the Government involved in this whole area, I could not give you any administration position on the nonpension-related questions.

On the pension-related questions, it gets down to a bottom line decision of remedy. I think you addressed the entire question in your opening remarks, and that is, do you want to embrace the traditional title VII type relief, which is a make-whole type remedy, which clearly would involve retroactive application, or do you want to take into consideration the question of employers and insurance companies, and the significant monetary impact, and draw some different type of remedial approach, which item 3 would indicate on our chart, which would be prospective in nature?

Senator LAUTENBERG. Do you have any suggestions on how we deal with the unfunded liability in this case?

Mr. RYAN. That is a very good question, Senator Lautenberg. We at the Labor Department have somewhat of a special interest in this area, and we have not commented on it previously, but Secretary Donovan is also chairman of the Pension Benefit Guaranty Corporation. Although we have conducted all of our studies on a macroeconomic basis, we have not been looking at this from a company standpoint or from an insurance standpoint. We are aware of the economic impact. A retroactive, purely topping up remedy

could significantly impact on some companies that we know to be in trouble from a PBGC standpoint.

We would be picking up, that is, the Federal Government, through the insurance company, the Pension Benefit Guaranty Corporation would be picking up any of the unfunded liability. That is a concern of ours. It has not been an overriding concern of ours in considering this legislation.

Senator LAUTENBERG. I have a couple more questions.

The CHAIRMAN. Go ahead.

Senator LAUTENBERG. Are there any suggestions you would like to make on the terms of the bill that could improve it without impairing its basic goal, or has that all been in your testimony earlier?

Mr. RYAN. No, Senator, unfortunately, it has not been in our testimony. Until we develop a full position in the pension area, and either go forward with it or complete the study on the other insurance issues, we will not be in a position to provide you with specific language suggestions. We will not be in a position to give you a specific comment line by line, section by section, which I think would be appropriate before the legislation is voted out of the committee.

Senator LAUTENBERG. It depends on the chief sponsor as to whether you need a line by line.

Mr. RYAN. We would certainly like that opportunity, Senator.

Senator LAUTENBERG. I think Senator Packwood will have to speak for himself.

Thank you very much, Mr. Chairman.

The CHAIRMAN. It depends on their answers.

Senator LAUTENBERG. I was trying to get to that, but not so eloquently.

The CHAIRMAN. I have no further questions, Mr. Ryan. Thank you.

Dr. Connerton, thank you for coming.

Next, we will take a panel consisting of Dr. Mary Gray, Ms. Judy Goldsmith, Ms. Kathy Wilson, Ms. Irma Brosseau, and Dr. Johanna Mendelson.

Let me say to the witnesses again, all of your statements will be in the record. We have a great many witnesses to go today. I plan to run this hearing right through the lunch hour, and hopefully finish it by 12:30 to 1 o'clock.

Dr. Gray, go right ahead.

STATEMENTS OF DR. MARY GRAY, PRESIDENT, WOMEN'S EQUITY ACTION LEAGUE; JUDY GOLDSMITH, PRESIDENT, NATIONAL ORGANIZATION FOR WOMEN; KATHY WILSON, CHAIR, NATIONAL WOMEN'S POLITICAL CAUCUS; IRMA BROSSIEAU, EXECUTIVE DIRECTOR, NATIONAL FEDERATION OF BUSINESS AND PROFESSIONAL WOMEN'S CLUBS; AND DR. JOHANNA MENDELSON, DIRECTOR, PUBLIC POLICY DEPARTMENT, AMERICAN ASSOCIATION OF UNIVERSITY WOMEN

Dr. GRAY. Mr. Chairman, I am pleased to represent the Women's Equity Action League in supporting S. 372, and commend you for your sponsorship.

I would like to confine my oral statement to two aspects of the legislation, its alleged retroactivity and the costs of its implementation.

First of all, there are, as you are well aware, no retroactive aspects to S. 372. It applies purely prospectively, that is, to premiums and benefits in the future. It does not require that additional payments be made to women whose past annuity benefits have been less than men's, and it does not require a refund of excess premiums paid in the past.

It does apply to existing contracts of insurance or annuities on which premiums or benefits are to be paid in the future. ERISA, enacted in 1974 to protect the pension plans of millions of workers, also applied to existing contracts in a way which modified employer liability.

S. 372 also needs to modify existing contracts to eliminate the discriminatory impacts. Were that not to be the case, everyone currently in the work force would have to die off before we have full equality. The last payment to a worker now covered by a pension plan may be 80 years from now. We cannot wait that long. Elderly women have suffered too many years already.

Second, you will be faced in these hearings with exaggerated claims made about the cost of implementation of S. 372, claims made by insurers and employers. Employers have no additional liability under S. 372, as you just heard Solicitor Ryan testify. They have been required under title VII of the Civil Rights Act of 1964 to end discrimination in employee benefit plans.

However, the fact remains, as Solicitor Ryan also said, that many have not done so. The major problem is with pension plans. How much would it now cost to eliminate discrimination? In most cases, little or nothing. Most plans or many plans are already sex neutral. In plans that pay dividends or other payments above the guaranteed benefits, benefits can be equalized without reducing the guarantees, and without the infusion of additional funds from insurers or employers.

As to the few remaining cases, employers may need to add very small, relative to the total pension cost, amounts. However, a recent survey of 95 major employers showed that they had voluntarily increased the pensions to their retired employees a median of 30 percent over the past 10 years at a cost far more than what equalization of benefits would cost.

Another aspect of the cost controversy involves whether women will pay more or less when S. 372 becomes effective. While that is not really the point, it does need to be addressed.

With respect to pensions, which represent the largest investment by far for most people, women will benefit as annuitants or as spouses or as survivors of annuitants. Women will benefit in health insurance and in disability insurance. In life insurance, where the rates truly are cost based, so that the excessive discounts for large policies would be reduced, women would gain.

In automobile insurance, if miles driven were substituted for sex as a classification factor, and the insurance were truly cost based, some women would pay more, some women would pay less. The same is true of men. However, on the average, young women would

pay no more than presently, and the average woman over 25 would pay not more, but less by 25 percent.

But I as a statistician, as well as a lawyer, know that there is nothing sacred about statistics. This is a matter of public policy. I have one life expectancy as an American, a longer life expectancy as a woman, a shorter life expectancy as one who works in the District of Columbia, a longer life expectancy as a nonsmoker, a shorter life expectancy as one who is overweight. Why pick on my sex to my disadvantage?

Mr. Chairman, I urge prompt enactment of S. 372, with its current provisions for full prospective relief. Thank you.

[The statement follows:]

STATEMENT OF DR. MARY GRAY, NATIONAL PRESIDENT, WOMEN'S EQUITY ACTION LEAGUE

On behalf of the Women's Equity Action League, I want to express strong support for S. 372, the Fair Insurance Practices Act, and to urge its prompt enactment by the Senate. Congress has already legislated to outlaw discrimination in employment, education, housing, and credit. The Bill before you will prohibit discrimination by the insurance industry on the basis of race, color, religion, sex, or national origin.

Representatives of the insurance industry and of employers have alleged that S. 372 would impose enormous costs on them because of its so-called retroactivity provisions and would cost women more in insurance than they are presently paying. I am here to tell you that:

(1) Women will benefit from the elimination of discrimination in insurance. They will benefit in annuities, both as retired workers and as spouses and survivors. They will benefit by paying less for health insurance and for disability insurance. And, contrary to industry assertions, were the current discriminatory practices in the pricing of automobile and life insurance replaced by truly fair cost-based pricing, women would pay less for these types of insurance as well.

(2) S. 372 imposes no additional cost on employers beyond their obligations under title VII of the Civil Rights Act of 1964.

(3) There are no retroactive aspects to the relief contemplated by S. 372. Benefits and premiums would be equalized *purely* prospectively.

The fairness of insurance availability and cost is a matter of public policy and cannot be left entirely in the hands of the insurance industry. The record of the industry is one of discriminatory practices that are blatant and widespread and clearly contradictory to the spirit of the non-discrimination legislation enacted by Congress in other fields. The decision you are now called upon to make is therefore long overdue.

The United States Congress must take the lead and set a national standard. Federal legislation is needed to prevent the disparate treatment, and the different degrees of enforcement in different states, result from piecemeal state legislation.

Insurance discrimination, either overt or subtle, is widely practiced on the basis of race, national origin, religion, and sex. In this statement I focus on insurance discrimination on the basis of sex. Sex-based insurance discrimination is not a matter of concern for only a small minority; women represent over one-half of the U.S. population and one-half of the electorate. Insurance costs and availability are especially important to women who work and women who are heads of households; 62 percent of all women aged 18 to 64 are now in the workforce; 66 percent of these women are widowed, divorced or unmarried or work to raise their family income to above \$15,000 a year. Sixteen percent of America's 62 million families are single parent families maintained by a woman.

Many of the discriminatory practices of the insurance industry are based on outmoded stereotypes. For example, limitation of access to disability insurance, as well as the assessment of higher rates, is premised on the belief that for women, work is a mere diversion, to be given up at the first opportunity if disability insurance is available.

Many of those who failed to support the Equal Rights Amendment claim to be in favor of the ER without the A. Elimination of discrimination in insurance is an important step in insuring equal rights for women; if equal rights are to be secured through legislation, this is the place to begin.

Treating all women as the average woman is the essence of discrimination. An employer is not permitted to refuse me a job because the average absentee rate for women is greater than for men—particularly when I have never in my life missed a day of work because of illness. Similarly he should not be able to pay me less in my retirement because of my life expectancy as a woman. I have one life expectancy as an American, a longer life expectancy as a woman, a shorter life expectancy as one who works in the District of Columbia, a longer life expectancy as a nonsmoker, a shorter life expectancy as one who is overweight and who never stays home from work to go to the doctor. Why use only my sex to pay me less in a pension and to charge me more for health insurance?

Mr. Chairman, I urge the Committee to act favorably on S. 372. In particular, I urge that the provisions for full prospective relief be retained. We cannot wait the eighty or so years until everyone currently in the workforce dies for full equality. We have waited too long already.

I. EVIDENCE OF WIDESPREAD SEX DISCRIMINATION IN ALL TYPES OF INSURANCE

The insurance industry has a long record of discrimination, first against blacks, then against women. Indeed, the National Association of Insurance Commissioners (NAIC) has recognized the existence of sex-based discrimination within the insurance industry:

(In the health and disability lines of insurance . . . many companies restrict the types and amounts of coverage which are available to females and charge rates for females which exceed male rates for identical coverage. Life insurance and annuity rates reflect lower mortality rates for females although the adequacy of the rate differentials are subject to question. Many life insurance companies have also been found to apply restrictions to the availability of coverage to females which do not apply to males . . . Availability of automobile insurance with some companies is also affected by marital status. The premium rates charged for homeowner and property insurance do not vary by sex although a single or divorced female may encounter more difficulty in obtaining coverage than a male in similar circumstances.¹

The extent of the discrimination involved can be clearly seen if we look more closely at (1) the availability of insurance, (2) the premiums charged, and (3) the terms and conditions that affect the benefits due.

II. IN THE AREA OF HEALTH INSURANCE

Coverage may not be available for prenatal and post partum care, family planning and gynecological disorders and related conditions. Rates are substantially higher for women, even though claims for accident coverage at all ages are actually greater for men. At about age 40, the total claims for men begin to exceed those for women and continue to do so at older ages. In many cases, rate differentials are not supported by statistics on costs.

One form of sex discrimination: Insurance for pregnancy and related conditions

As Congress recognized when it enacted the Pregnancy Discrimination Amendment to Title VII in 1978, pregnancy discrimination is a particularly invidious form of sex discrimination.² Yet in the insurance industry, pregnancy related conditions have almost uniformly been treated as a special case. We highlight insurance availability and coverage for pregnancy here because this benefit is of special importance to women and because the insurance industry remains strongly opposed to the concept of insurance coverage of these costs.

In terms of availability, pregnancy costs were traditionally totally excluded from health and disability plans. In individual coverage, many large insurers still do not provide maternity benefits. Even when maternity benefits are provided they are extremely low:

Only 38.44 percent of medical costs due to pregnancy are reimbursed, according to a 1975 Michigan survey.

¹ Appendix I to Statement of Barbara J. Lautzenheiser, on behalf of the American Council of Life Insurance and the Health Insurance Association of America before the Senate Subcommittee on Antitrust, 30 April 1980.

² Mr. Justice Stevens, in dissent in *Gilbert v. General Electric Corp.*, 429 U.S. 125 (1976), expressed this eloquently:

"By definition, a classification revolving around pregnancy discriminates on account of sex; for it is the capacity to become pregnant which primarily differentiates the female from the male."

A normal delivery costs approximately \$2,500, yet many major companies offer only \$500 as a maximum benefit for a normal delivery.

The insurance industry justifies its refusal to cover pregnancy-related costs on several grounds. First it argues that pregnancies cannot be considered risks because they are neither sickness nor an injury, and as a corollary, that they could be budgeted for. This argument totally ignores the fact that 12 percent of births are unwanted.³ Further, vasectomies, prostatectomies, and cosmetic surgery, as well as sports injuries are generally covered.

Second, the industry claims that the cost of coverage for pregnancy and related conditions would be prohibitive. But this claim has not been substantiated. On the contrary, the Citizens' Advisory Council on the Status of Women reported that a large insurance company determined that the increased costs would be only 10 percent of the premium rate payable by a group if 40 percent of the group's members were female.⁴

Coordination of benefits

Under the guise of coordination of benefits provisions in many state insurance regulations, women are systematically denied benefits for their dependents even though they have paid for such coverage. Typical provisions call for benefits to be paid on a mother's policy only if the father will attest to the fact that he essentially assumes no responsibility for the children; some companies require such verification for each claim, even when the parents are divorced and the mother has full financial responsibility as well as custody of the children—and in fact even when it is impossible to find the father. There is no reason why mothers should not be able to provide health coverage for their children on the same basis as can fathers. Companies explain looking first to the father's coverage as administrative convenience; this is the same sort of sexual preference rule struck down by the Supreme Court in *Reed v. Reed*,⁵ except that here it is for the convenience of the insurance companies rather than for the convenience of the state.

III. IN THE AREA OF DISABILITY INSURANCE AVAILABILITY

Disability income insurance is rarely if ever available to women whose jobs are performed at home, although the loss of homemaker and childcare services may mean a substantial cash outlay for replacement services. This is a reflection of the refusal to recognize marriage as a partnership with an economic contribution by the spouse who is not employed outside the home. Disability insurance is rarely available to parttime employees, particularly waitresses, domestic aides, etc. Since more part-time workers are women, this policy has a disparate impact on women. Disability income insurance may be excluded for periods of disability resulting from medical or surgical treatment of sex-linked disorders. Some, but not all, states have regulations forbidding discrimination in access to disability insurance; none forbid discrimination in rates.

Premium rates

Ten out of thirteen insurance companies surveyed in Pennsylvania charged higher premium rates for women than for men carrying identical or better coverage. Women are charged 150 percent higher rates than men in the same job classification in New York while a rate differential of 45 percent to 115 percent exists between the sexes in Colorado. Because of the industry's exclusionary practices, there is little data which can support the differential rates being charged; indeed in recent litigation an insurance company was forced to alter its discriminatory policies when it was found that they were completely arbitrary.

Terms and conditions of benefits

In many policies longer waiting periods are required for women before benefits are payable. Frequently there are shorter basic periods for women (maximum time for which benefits may be paid), such as ten years for men and two years for women. Monthly benefits are subject to lower maximum levels for women.

³ Supplemental Statement of the American Association of University Women submitted to the Senate Subcommittee on Antitrust on 16 June 1980.

⁴ See Sydlaske, "Comment: Gender Classifications in the Insurance Industry," 75 *Columbia L. Rev.* 1381, n. 43 (1975).

⁵ 404 U.S. 71 (1971).

IV. IN THE AREA OF LIFE INSURANCE AVAILABILITY

Under some life insurance policies, a married woman can purchase coverage only up to the amount of coverage held by her husband. In other cases primary benefits cover only a spouse employed outside the home; such a practice on the part of insurers has a disparate impact on women. Frequently because of such limitations a family is unable to design its coverage to meet its perceived needs.

Terms and conditions of benefits

Waiver of premium options eliminate the need for premium payments during disability. In most plans women, but not men, are required to show that they work outside their home, in a low risk occupation, and that they have a "definite need" before they may avail themselves of this benefit.

Premium rates

Though women ostensibly now pay less for life insurance, in fact they pay more per \$1,000 coverage than do men; the differential rate for small policies is far in excess of what is necessitated by administrative costs. Women, on the average, because of their economic circumstances, have smaller policies. Moreover, there are differential discounts available. For example, in one case a male non-smoker pays less than a female non-smoker although a male who smokes pays more than a female who smokes. Also, currently the cost differentials between males and females for the same coverage are far less than the differentials between the most expensive and the cheapest policy with the same coverage. Thus a woman could save money over her current cost for one of the more expensive policies if she switched to a unisex policy with one of the cheaper companies.

V. IN THE AREA OF ANNUITIES AND PENSIONS PREMIUM RATES

Many private annuity plans either charge women higher premiums or give them lower benefits than men. Insurers justify this practice by reference to the fact that in the general population the mortality of women is less than that of men. However, the basic principle underlying insurance is that of risk-sharing. Insurance companies could choose to classify risks in any number of ways, but they usually choose to do so on the bases of age and sex. Classifying by race would advantage blacks in annuities, but insurance companies do not use race as a classification. Classifying by religion would disadvantage Mormons in annuities, but insurance companies do not use religion as a classification.

Insurers used to argue that they must, as a matter of sound business practice, classify by sex. Obviously they need not do so; they have survived the elimination of race as a classifying factor, and they can survive the elimination of sex as a classifying factor. Actuaries would have no trouble recomputing premiums and benefits based on whatever risk classification they are instructed to use, computing them in such a way as to guarantee the continued profitable operation of their companies. In fact, many companies are currently not differentiating on the basis of sex. Most group life insurance policies (to the advantage of men) have unisex rates and benefits; most employment-related pensions plans are unisex. The University of Minnesota recently switched its employees from TIAA-CREF to a pension plan through another insurer which would provide unisex rates and benefits. In a recent article in *Fortune*, Coy Ecklund, former chairman of Equitable Life Assurance, one of the most forward-looking companies in the industry, was quoted as stating that he "could accept" a public policy decision to go unisex on all insurance and annuities. As a matter of public policy, risks of longer life should be shared by the general group of insurees, not by women only. The American Council on Life Insurance has recently dropped its opposition to the prohibition of the use of sex as a risk classification factor.

Not only is treating every woman as some sort of "average" woman violative of the basic principle of non-discrimination—unequal treatment of individuals on the sole basis of their sex⁶—but the way insurance companies choose to do so is completely arbitrary and capricious. Rather than using tables based on the mortality of women, they use an arbitrary set-back of the male table to approximate (very roughly) the mortality of women; the "gap" between male and female mortality is

⁶ In *City of Los Angeles v. Manhart*, 435 U.S. 702 (1978), the U.S. Supreme Court declared the use of sex as the only classification other than age in employment-related plans to be a violation of Title VII. Non-employment related plans are, of course, not subject to Title VII. See also, *Reilly v. Robertson*, *EEOC v. Colby College*, *Spirit v. Colby College*, *Peters v. Wayne State University*, *Arizona v. Norris*, *Henderson v. Oregon*, among others.

not constant; it varies from age to age. Due to past restrictive policies of insurers, there is little mortality history of insured females, particularly with respect to annuities. Moreover, what is known of the life expectancy of women in general is, by necessity, based on women already dead and does not reflect the recent history of women in high pressure jobs or of substantial numbers of heavysmokers. Today's women may have life expectancies more similar to those of men by the time they retire, but this will not be reflected in their annuity benefits. That the longer life expectancy of women in the general population in the United States is not due solely to biological factors is shown not only by their differential exposure to self-selected risks—smoking, drinking, accidental deaths—but by the fact that females do not have a greater life expectancy at every age in every country at every period of time.⁷

Even more telling evidence of the discrimination against women practiced by insurers is that many companies use a lesser setback (or none at all) in life insurance (where their greater longevity should be an advantage to women) than they do for annuities. It would appear that women are compensated for the discrimination in pension benefits by the benefit—dubious though it may seem to the retired college professor surviving on cat food—of a longer life. In fact, for most women even this benefit is illusory:

While the "average woman" dies later than the "average man," considerable overlap exists in the distribution of death ages. If at a single point in time we were to pick at random 1,000 men age 65 and 1,000 women age 65, and follow them through and observe their death ages, we would find an overlap of 84 percent. This means that we could match up 84 percent of the men with 84 percent of the women as having an identical year of death. This leaves 16 percent of the population, consisting of the 8 percent who are men who die relatively early, unmatched by women's deaths, and the 8 percent who are women who die relatively late, whose deaths are unmatched by male deaths.

Allowing employers [or insurers] to provide higher pension benefits for men than for women on the grounds of higher cost is to allow employers to assume that all men and like the "average man" and all women are like the "average woman" in terms of death age. It allows employers to arrange things so that the savings in annuity cost for the 8 percent of the population consisting of excess men who die early are entirely monopolized by men, although 84 percent of all men are in the overlap group.

The extra burdens imposed by the higher annuity costs of 8 percent of the population consisting of excess women who die late are entirely allocated by employers to women, 84 percent of whom are in the overlap group. This is "because" the conformation of the sex organs of men do not match those of the excess people who die late.

The women in the large overlap group with lower pensions are, to say the least, in an unfortunate position. The considerable difference is their living standard is not even compensated for by the dubious utility of a longer life; they do not cost the system any more than men do; their only crime is that they have the same sex organs as the few people in the longer-lived group.

This seems a slender reason to condemn them to a considerably meaner living standard than men. Public policy . . . requires that the burden of supporting the 8 percent of the population who are longer lived be shared by the entire population, rather than putting the whole burden on the 42 percent of the population (most women) who are like the long-lived group in sex organs but not in longevity.⁸

Thus we see that allowing insurers to group by gender results in similarly situated—in terms of longevity and contributions to the pension plan—men and women being treated differently in benefits; the essence of discrimination is to disadvantage individuals simply because of their membership in particular race, gender, or national origin group. Such discrimination should be prohibited by law.

Some have criticized the so-called "overlap theory" as being irrelevant to the fairness of discrimination in insurance. In fact, it is highly relevant, for it shows that similarly situated men and women in terms of longevity are treated differently. Prohibition of such disparate treatment is the essence of civil rights law. In addition, the overlap argument belies the assertion that the lifetime benefits of men and women will be equal even if the periodic benefits are not. While that may or may

⁷ L. Brilmayer, R.W. Hekeler, D. Laycock and T.A. Sullivan, "Sex Discrimination in Employer Sponsored Insurance Plans: A Legal and Demographic Analysis," 47 *Univ. of Chicago L. Rev.* 505 (1980).

⁸ B. Bergmann and M. Gray, "Equality in Retirement Benefits," 8 *Civil Rights Digest* 25 (1975).

not be true for the group, it is not true for 84 percent of the men and women. If a woman and a man die at the same time, under unequal periodic benefits, her periodic and her total benefits will be less than his. The other relevant feature of the theory is that it simply reinforces the observation that people can be grouped many different ways for risk-classification purposes; it is only if a prior decision to discriminate on the basis of sex has been made that the issue of male v. female mortality arises. We could simply predict the mortality of an American, a bricklayer, a college professor, a Mormon, a Hawaiian—regardless of that person's sex.

Others draw an analogy with age. It is true that there is a death-age overlap with 60 and 65 year olds. However, age is treated differently in civil rights legislation. One reason is that age is not immutable, that is, we all pass in and out of age groups to our advantage and disadvantage. We could all buy life insurance at age 25 and get the benefits of a lower rate than if we wait until 30; we cannot do anything about sex. Also, that age is a continuum and sex is not another reason why the analogy is not appropriate. Moreover, as a matter of public policy we want life insurance to be cheaper for young people who most need protection.

A final attempt to discredit the highly effective overlap model is to point out that of a cohort of 65-year olds, at age 85 twice as many women as men will be alive. That only shows that as to those already dead, the men and women whose death ages match received differing total benefits; moreover, as to those still alive up to age 85 each woman will have received less than each man and will continue to do so each month until she dies—before some of the 85-year old men and after some of them. Not too long ago, the president of TIAA-CREF celebrated their oldest living annuitant—a male professor of Latin well over 100 years old.

The notion of life expectancy is one not well understood by the non-quantitatively oriented. However, suffice it to say that expectancy must be defined relative to some group. I have one life expectancy as an American—I have a longer life expectancy as a woman, a shorter life expectancy as someone in a stress-filled position, a longer life expectancy as a non-smoker, a shorter life expectancy as one who is overweight. There is no reason why our sex should be singled out to penalize me or my female colleagues when we retire; our sex will not assure us of a longer life, only of a life in more straitened circumstances.

I look at my male colleague who has the same work history as I—same number of years of work, same salary, same contributions to a pension plan. There are many things he can do to increase his life expectancy. He can quit smoking, quit drinking, lose weight, indulge in preventive medical care. He can do other things which have only a "statistical" effect-like moving a block up Connecticut Avenue out of the District of Columbia and into Maryland. None of these will reduce his periodic pension benefits, even though those in the first category will increase his total lifetime income from them. I can do the reverse of all these things and reduce my life expectancy. But short of being paid a higher salary or living on less disposable income than my male colleague, there is nothing I can do to increase my pension benefits. I am doomed to retire at 15 percent less per month than my male colleague.

Not only is Women's Equity Action League the leading advocate on issues of economic equity, but we have focused in the past few years particularly on issues of concern to older women. I would commend to your attention our testimony earlier this year on Social Security reform before the Senate Finance Committee. Older women have been disadvantaged throughout their lives by being paid lower salaries, by being denied opportunities, by not being protected in their homemaker roles. We should not further disadvantage them by double discrimination in their pension benefits.

VI. AUTO INSURANCE

Much is often made of the "advantage" enjoyed by women in auto insurance; industry representatives speak of the \$700 million dollar "income transfer" from young women to young men which would occur were discrimination on the basis of sex prohibited. In fact, sex is being used as a proxy for miles driven. Number of miles driven is the best indicator of accident rates, notwithstanding the statistics produced by the insurance industry. In every age category women on the average drive fewer miles than do men; in every age category—not just under 25—women have fewer accidents than men. However, at older ages the advantage in rates for women disappears except in a few cases. Were miles driven used as a risk classification factor, women over 25 would pay 20 percent less on the average than they now pay. Thus while if sex were eliminated as a risk-classification factor and miles driven were substituted, some women would pay more and some less, but on the average women would pay 20 percent less. Also, the computation of accident rates is

subject to manipulation. For example, if a young male is listed as a driver of a car and his mother has an accident while driving it, that is a "young male accident." At least one state has forbidden rate classification based on such statistics as a matter of consumer protection.

It also should be noted that in five states sex may not be used as a risk classification factor for auto insurance; no companies have gone broke offering insurance under such a scheme. At least one company offers sex-neutral rates in other parts of the country. It is interesting that state prohibitions have come only in the area where the use of sex as a classification disadvantages males.

Moreover, there is in fact discrimination in auto insurance against women. Such discrimination is disguised as discrimination on the basis of marital status, but in reality discrimination against the divorced is far more prevalent with respect to women applicants for auto insurance than with respect to their male counterparts, at least for those over twenty-five and with respect to obtaining coverage at all rather than with respect to rates.

VII. FAIR DISCRIMINATION

The insurance industry would have you believe that what they engage in is "fair" sex discrimination, as opposed to "unfair" sex discrimination. I do not know what "fair" discrimination is, but I do know that what the insurance industry and employers currently do is unfair. It is unfair not only because it treats every woman as the average woman. It is also unfair in the way it purports to base its discrimination on statistics. The lesson to be learned is that if sex is used as a classification factor, it is likely to be misused. For example:

(1) The use of differentials in disability insurance premiums with no data to relate to the costs of providing coverage.

(2) The failure to use miles driven as a risk-classifying factor—to the detriment of adult women.

(3) The use of differential setbacks in tables for annuities and life insurance—in some cases giving women a six-year disadvantage in annuities and only a three-year advantage in life insurance, even when exactly the same population is being insured.

(4) The failure to use other significant predictors of longevity such as race, religion, geographic area, life style factors.

(5) The granting of substantial discounts to large life insurance policy holders, far above what is justified by administrative costs.

(6) The use by some employers of unisex life so that women have no advantage, but of sex-distinct annuities so that women have a disadvantage.

(7) The exclusion of pregnancy-related disabilities from coverage when no other "voluntary" disabilities or single sex health problems are excluded.

(8) The establishment of "coordination of benefits" provisions which look first to a child's father for health insurance coverage.

VIII. COSTS

Critics of S. 372 usually focus on two aspects of the costs of implementation. First they assert that women as a group will lose more than they will gain. This is untrue, and in our view, irrelevant. We oppose discrimination against men as well as against women.

However, the fact is that women would benefit. As I have pointed out, if appropriate risk factors were used, women on the average would pay less for auto insurance than they do now. The increased cost of life insurance, if any, would not be substantial. One of WEAL's staff members recently received an offer of \$100,000 of life insurance. The cost per month to a 25-year old female: \$11.27; to a 25-year old male: \$11.36. If she were disposed to purchase the policy, she could handle the big increase that would result from going unisex. Moreover, as I have noted, were life insurance truly "cost-based"—a phrase much favored by the insurance industry—women would be paying less for life insurance than they now are.

The amount of money involved in pension premiums is, for most people, far more than that involved in auto and life insurance. In my own case, the ratio is nearly 10 to 1. It is also true that some men would benefit from non-discriminatory practices with respect to pensions. For example, the joint-survivor option has benefits calculated on the basis of the longevity of the spouse of the principal annuitant as well as that of the annuitant. Under unisex plans, the benefits to a male principal annuitant under a joint-survivor option would be greater than under sex-segregated plans. However, this is also an advantage to the female spouse or survivor of such an annuitant.

The second argument regarding costs applies primarily to pensions, where critics assert that the "retroactivity" provisions of S. 372 would be enormously costly. I should like to point out that there are no retroactive provisions in S. 372. The bill calls only for prospective relief, for the equalizing of costs and benefits in the future. Having said that, let me be more specific. First of all, in general, casualty insurance, health insurance and life insurance premiums pay for benefits in the same period of time in which the premiums are paid. The policies, except in the case of some kinds of life insurance, are normally for relatively short periods of time and when the renewal time comes the terms can be altered. There is some expense involved in recomputing premiums and in producing new informational flyers, etc. However, that is not substantial and in any event insurance companies are constantly coming out with new products and readjusting their rates. Some life insurance contracts extend indefinitely, but most require payments to be continued to insure the eventual benefits; again, the change to non-discriminatory terms is not a major problem. New contracts, contracts in conformance with the public policy of non-discrimination, can be issued.

With respect to pensions, there are essentially three groups of people with whom we must concern ourselves: (1) those who are already receiving benefits and are no longer paying premiums (immediate annuitants); (2) those who are currently paying and have in the past paid premiums and are not yet drawing their annuities (deferred annuitants); (3) those who will acquire (start paying in) annuities in the future. Clearly the third group presents no problem.

Within the second group there are two kinds of credit towards pensions: past and future. Again, with respect to future credits there should be no problem. Some would try to claim that existing contracts guarantee deferred annuitants the right to pay in and get back discriminatory benefits as a result of those future payments; however, again contracts contrary to public policy can be altered. With respect to money paid in before the effective date of S. 372, the bill would require that the benefits be paid out in a non-discriminatory fashion. This could be done one of two ways: either the benefits could be averaged-out or the benefits of the women could be raised to those of the men (or those of men to those of the women in the case of the joint-survivor option).

S. 372 requires that benefits not be reduced. With respect to those who retire in the future this can, in most cases, be done without the infusion of additional funds. As the Brief of Eight Individual Actuaries in *Arizona Governing Committee v. Norris* stated: "Insurers have . . . protected themselves . . . by including substantial safety margins in annuity premium rates. These margins are required more because of uncertainty as to future investment returns than because of uncertainty as to the mortality of the annuitants." Thus there are ample funds to pay as if everyone had the mortality of men. For example, TIAA-CREF pays nearly twice its guaranteed rate to its immediate annuitants; this is because it computed the guaranteed amount on the basis of unrealistically low interest rates. The same is true for most insurers; there are ample funds above guarantees available to equalize payments. Were equalization not required, this additional money would simply serve to widen the gap in men's and women's payments. Equalization is possible without the infusion of additional funds and without reducing guaranteed benefits in most cases. In a few cases employers might have to set aside a relatively small amount of additional funds; however, it would not be nearly as much as they have spent voluntarily to increase the pensions of all retired workers.

For example, a 1981 study by Towers, Perrin, Forster & Crosby of 95 major companies showed that the median increase in the pensions of already retired workers in the past ten years was about 30 percent, in the past five years 15 percent. Somehow the money was found to do this voluntarily, to increase the standard-of-living of retirees, to give them more than they had been promised. Equalizing benefits for men and women would cost a tiny fraction of the amounts involved in these equalizations. Interestingly, two insurance companies were included in the study. One increased its retired employees' pensions in 1977 by 10 percent and in 1981 by another 15 percent above what they had been guaranteed at retirement; another gave a 10-percent increase in 1979 and 9-percent increase in 1981. These increases frequently served to increase the male-female differential; it is now time to spend a little money to redress the imbalance.

Where then do the enormous cost estimates of the insurance industry come from? They ignore the issue of their own reserves and speak of the addition of more funds, it is true, but more importantly, they included in their estimates the costs of equalizing benefits for all employment-related annuities. In our view, and in that of the Equal Employment Opportunities Commission, the Department of Labor and the Department of Justice, as well as the First, Second and Ninth Circuits, equality of

benefits is required in employment-related plans by Title VII of the Civil Rights Act of 1964. Hence S. 372 would not affect these plans so that any costs related to bringing employment-related plans into line with Title VII (nearly twenty years after its passage) are not, in spite of industry claims, properly attributable to S. 372. The industry has provided no cost estimates for only those annuities which are not employment related. Nor have they made the important distinction between "topping up" to guaranteed rates and "topping up" to rates far in excess of guarantees, that is, the rates males would have been paid absent a requirement for equalization. We do not know the actual costs attributable to S. 372; we should welcome an industry estimate of these real costs as opposed to those they have improperly attributed to S. 372. The real costs are certainly very small—perhaps more like two million than the industry figure of two billion. In particular, in comparison with the total amount of money involved in insurance, equalization costs are miniscule. A recent Washington Post advertisement by the American Council on Life Insurance spoke of the new 29 billion dollars to be invested this year in addition to the 500 billion dollars in existing investments.

Nonetheless, because the wildly inflated figures put forth by the insurance industry have received wide publicity, I feel obliged to point out their exaggerated nature even when one considers that they deal with employment-related pensions where equality is already mandated by Title VII. The Department of Labor has prepared its own refutation of the industry figures, showing that some of their estimates are off by as much as a factor of ten, due to such things as negligently including plans such as the railroad retirement plan which are already unisex, using unrealistic interest rates, etc. There are still problems with the figures and methodology of the DOL study, in particular their failure to distinguish between guaranteed and actual payout rates. But the study does emphasize how small the costs really are. For example, equalization costs are less than one billion in plans which have a total of 650 billion dollars in them and which have 42.5 million participants. To cite another figure: to "top up" benefits to the male level in the most expensive way possible would cost only six to eleven dollars per plan participant per year. It would be zero in most plans if the "topping up" were only to the guaranteed rate. The total "shift of benefits" if the benefits were averaged out over men and women would be less than \$100 per year per retiree. Even if employers were required to put in additional money, DOL estimates are of the order of magnitude of less than one-half of one percent of payroll costs. We contend that even DOL estimates are too high and that there would be essentially no cost to employers because of the conservative guarantees built into existing plans.

The Committee should be aware that municipalities such as the City of New York would experience no additional burden under S. 372. It is doubtful that as self-insurers the language of the bill is even applicable to them; even if it is, they have been required for many years to equalize their benefits and premiums under Title VII. There is ample evidence that they have themselves recognized this since the 1978 decision in *City of Los Angeles Water and Power v. Manhart*; they have been in litigation for a number of years and their plan has been found to be illegal. S. 372 imposes no new burdens on municipalities or other public employers.

Critics of non-discrimination allege other "costs" of equality—adverse selection as men opt out of pension plans, employer shifts to lump sum options with resulting higher costs to individuals. Men are unlikely to opt out of plans, even were the plans voluntary. Losing the advantage of group rates cannot be made up by the purchase of individual annuities even if they were allowed to continue to be sold on a discriminatory basis. However, under S. 372 both individual and group plans would be sex-neutral.

Insurers profess fear that ending discrimination will cause people to buy less insurance. In particular, they cite the fact that if males were forced to "subsidize" women in annuities, men would not buy annuities. There is no evidence of this effect in existing unisex plans. Annuities provide protection not otherwise available; people want that kind of protection. Analogously, people want life insurance; those of higher economic status have longer lives and thus (by the industry's argument) should pay less for life insurance than their less well-off brethren. Nonetheless, because they want life insurance they do not seem to mind "subsidizing" the poorer risks as they continue to buy life insurance.

However, the real fear of the insurance industry may be that when attention is focused on some unfair pricing practices, consumers will note other inequities and overcharges and demand that they be corrected, which may indeed lead to a reduction in insurance company profits.

Nor is it the case that disruption of the industry will result or that tax-revenues will be lost. Many companies and self-insured pension plans operate on a unisex

basis. There is not one shred of evidence that the enactment of non-discrimination legislation will cause the loss of jobs. In fact, since older women represent a large share of those below the poverty level and hence the recipients of governmental assistance programs, the bill may take some of the burden of their support from federal, state and local taxpayers.

Even if the real costs of implementing S. 372 were substantial, however, the principle of non-discrimination requires that they be met. Moreover, it is essential that the bill apply to any insurance or annuity benefits to be paid in the future, regardless of when the premiums were paid. If the prospective remedy is not fully implemented, it will be over eighty years before there is equality; we would have to wait until everyone currently in the workforce is dead. We have waited too long already.

IX. THE M'CARRAN-FERGUSON ACT

The McCarran-Ferguson Act was passed to prevent courts' interpreting legislation (in particular, anti-trust legislation) to cover the insurance industry, contrary to Congressional intent. Congress has, on the other hand, had no hesitancy in regulating insurance when it chooses as in ERISA. Consumers have traditionally had great difficulty in securing protection through state insurance regulators, who have approved industry rates and practices with little questioning. Interestingly, several years ago a task force of the National Association of Insurance Commissioners asserted that there was no justification for the use of sex in risk classification in auto insurance. An "advisory committee" of insurance industry "experts" persuaded NAIC not to adopt the task force's recommendations. Many insurers see S. 372 as a "foot in the door" toward more careful scrutiny of their pricing policies. Although the bill does not usurp the functions of state regulators, and in fact only applies if states have failed to act, it is clear that if discrimination is to end uniform federal legislation is required. The states have failed to act for far too long.

CONCLUSION

(1) There is evidence of discrimination on the basis of sex in access, premiums and benefits in insurance.

(2) In accordance with the spirit of Congress' previous legislation in employment, education, housing, and credit, and the trend of legal decisions, Congress should outlaw discrimination on the basis of race, color, sex, religion, or national origin in the insurance field as well. Uniform federal legislation is needed.

(3) No serious distortion to existing market relationships in the insurance industry would result from the prohibition of discrimination. In particular, there is no actuarial bar to equal treatment nor are the costs of any changeover significant in relation to the total amount of money involved in insurance.

(4) A "cost-based" pricing system for insurance where sex is not used as a proxy for actual risk factors would be fairer and more equitable for men and women. Some men would pay more, some would pay less; some women would pay more, some would pay less. On the whole, women on the average would benefit, but more importantly, no one would be disadvantaged solely because of his or her sex.

(5) Equality of access and terms and conditions of insurance as well as equality in rates is important and needs to be guaranteed through legislation.

(6) Insurance is an important part of economic equity for women, in particular for homemakers, women heads of families and older women. If we are to have equal rights, discrimination in insurance must be ended.

(7) It is important that all rates and benefits be equalized at the effective date of the legislation. We cannot afford to wait another eighty years for equality.

We therefore urge you to vote for S. 372.

The CHAIRMAN. Thank you very much, Mary.

Ms. Goldsmith.

Ms. GOLDSMITH. Mr. Chairman, I am Judy Goldsmith, president of the National Organization for Women.

Sex discrimination in insurance is not about longevity or auto accident rates or sound actuarial principles. Discrimination is about money. Insurance companies use sex classifications selectively as a nominal basis for defining prices, payouts, and coverage for major types of insurance. Although tying prices to sex may first appear to advantage one sex or another, an analysis of insurance products

shows that sex discrimination primarily pays off for the insurance companies by facilitating manipulation of prices.

Insurance companies are fighting S. 372. They want to keep sex discrimination legal, because it is profitable for them to charge women higher rates for medical disability insurance and to pay out to older women annuities that are 10 to 15 percent lower than those paid to older men.

Insurers call that fair sex discrimination, but what it really means is critical losses in earning benefits for women each year, both homemakers and wage earners. The so-called break for women in auto insurance is really only a lower surcharge—young women pay more than adult men—and it does not last long. After age 25, rates for women and men are the same, despite men's higher accident rates at all ages, with average miles driven the true risk factor.

The insurance industry is also selling the false idea that lowering prices for one sex would force higher prices on the other. Insurance pricing, however, is not rigidly cost based. The prices for identical life insurance coverage differ by 100 percent or more between insurance companies. Threats that eliminating discrimination will hurt women are just the kind of scare talk so common to insurance merchandising.

Opposition to S. 372 as a burden to public and private retirement systems is an arrogant assumption that some employees should contribute 10 to 15 percent of their retirement income to help keep taxes down and businesses afloat. Not surprisingly, this sacrifice is demanded not from those who have designed the faulty system and profited most from it, but from its victims, women retirees whose wages have been depressed below men's throughout their working lifetime and homemaking wives of retirees whose work received no wage recognition at all.

Opponents argue that S. 372's mandate against sex discrimination will burden public and private pension systems with several billion dollars in "added unfunded liabilities." Added to what? Today, the Nation's pension obligations of \$955 billion are \$300 billion higher than the pension assets. That unfunded liability is said to be secured by employer assets. Are employers and insurers really urging that sex discrimination in pensions be perpetuated 50 years more because pension systems cannot bear an added 1 percent in unfunded liability?

State insurance regulators and legislators apparently rely on the insurance industry for guidance about what is best for women. The 1981 proceedings of the National Association of Insurance Commissioners includes a study by the American Academy of Actuaries that is being sold as an "independent professional" evaluation of the impact of S. 372 on women.

The authors, identified only as members of the Academy's Committee on Risk Classification, are all vice presidents and actuaries employed by Aetna Life and Casualty, Insurance Services Office, Massachusetts Mutual Life, Mutual of Omaha, and New England Life.

Unremarkably, these industry officials find that both insurers and their customers, especially women, will be adversely affected by a ban on sex discrimination. In spite of growing consumer agita-

tion to end sex discrimination in insurance, the NAIC also passed a resolution in December of 1981 approving the use of sex-based pricing by insurers. The commissioners also filed a brief against the women plaintiffs in the *Norris* case currently before the Supreme Court, and 2 weeks ago, at their conference in Baltimore, they discussed H.R. 100 in the only conference meeting from which the public was barred.

With respect to sex discrimination, S. 372 would be a much needed law against discriminatory State insurance laws. In other words, it would be a superlaw. The country has just failed to enact another superlaw. As a constitutional principal, the equal rights amendment will ban legal sex discrimination in all areas. It will provide the constitutional basis for the nonsex discriminatory provisions of civil rights laws such as title VII and the proposed S. 372.

NOW supports legislation to end immediately all sex discrimination in insurance and pension contracts, and to bar sex discrimination from all such contracts thereafter.

[The statement follows:]

STATEMENT OF JUDY GOLDSMITH, PRESIDENT, NATIONAL ORGANIZATION FOR WOMEN

INTRODUCTION

I am Judy Goldsmith, President of the National Organization for Women, an organization consisting of 200,000 women and men associated for the purpose of taking action to achieve recognition of women's "equal rights and responsibilities in all aspects of citizenship, public service, employment, education, and family life" and to secure women's right to "freedom from discrimination because of age, marital status, sexual preference, or parenthood." [1]

The delegates to NOW's National Conference in October, 1982 found that: "Sex-segregated pricing of insurance is a major factor in the impoverishment of women and gives incentive to the insurance industry to block ratification of the ERA." The delegates voted that: "NOW will mount a major campaign to outlaw all sex discrimination in insurance." Testimony on HR-100 and NOW's support of strong, comprehensive civil rights legislation, federal and state, to prohibit sex discrimination in insurance is part of that campaign.

As with other civil rights issues, the issue of insurance discrimination is an economic one. In resisting legislation to eliminate discrimination, commercial interests are aligned against consumer and employee groups.

NOW's testimony is based on company price lists, on testimony and publications by the insurance trade and professional associations, and on publications by state insurance regulators. With respect to the setting of prices on insurance, our examination of variations in prices gives perspective to the relative significance of (1) claims costs classified [2] by the sex of the customers and (2) non-insurance factors, which would include such things as marketing strategies and equal discounting to simulate competitive pricing, as well as return on investment, and others.

This testimony considers the five types of insurance that divide prices, payouts, and coverage according to the sex of the customer: automobile, medical expense, disability income, life, and old age income insurance (annuities and pensions). (Prices and availability are, of course, fundamentally related.) This testimony shows that five standard types of insurance use division by sex in ways that are costly to women.

AUTO

The American Academy of Actuaries testified in May 1981 that enactment of HR-100 would cost women \$700 million more and men \$700 million less each year for automobile insurance. Since then this estimate has been widely quoted in periodicals as the chief reason why women would be "harmful" if the industry were no longer permitted to discriminate on the basis of sex. It is rarely mentioned, however, that this estimate applies to prices charged for insuring drivers under 21, and that these prices include severe surcharges of 100 to 250 percent or more [3] on insurance coverage of young women and men alike, without regard to driving record.

Surcharges for insuring young drivers are burdens more likely to be shared by parents than borne by the daughters and sons alone. In this context, the temporary discount for young women, in the form of a lower surcharge, may more accurately be viewed as a savings for parent rather than daughter. Along with the "good student" discount, [4] it is the sort of customer-pleaser that any good sales department might devise, but it is not an actuarial necessity.

A striking inconsistency concerning these surcharges for young drivers is that surcharges taper to 0 percent at ages 25 to 30, depending on marital status. Yet the accident rate of men at all ages averages 1.43 times that of women, according to insurance industry testimony.[5] Industry testimony is silent on the fact that women thus "subsidize" men for most of their driving lifetime. If the real reasons for this difference, such as driving record and mileage totals, were to replace sex of the driver as a basis for auto insurance prices, such objective bases would be of greater benefit to more women (at all ages) than the present imprecise reliance on sex as a proxy variable for accident rates and the arbitrary surcharging of young drivers and their families.

It cannot safely be assumed that sex-based auto insurance prices are closely derived from claims experience. Court cases have revealed the gross inadequacies and distortions of insurance company record-keeping on accident claims as related to age and sex of drivers.[6] Five states have already prohibited auto insurance prices based on sex.[7] There is considerable support in many other states for enacting the same prohibition.[8]

HEALTH

The prices on medical expense and disability income insurance range above 100 percent more for women than for men at ages in the 30's and 40's.[9] Regardless of the accuracy of insurance claims data (all are vulnerable to criticism), neither healthy women nor sickly men are rarities.[10] The Supreme Court expressed an appropriate philosophy of insurance in its 1978 *Manhart* opinion: "... when insurance risks are grouped, the better risks always subsidize the poorer risks. . . . To insure the flabby and the fit as though they were equivalent risks may be more common than treating men and women alike; but nothing more than habit makes one 'subsidy' seem less fair than the other." [11] Clearly, women would benefit from a prohibition on basing health insurance prices on sex.

A common misperception is that sex-based prices for individual health insurance do little harm because most women are covered as employees of spouses by group plans that are non-discriminatory, as required by Title VII. In fact, however, group plans are not available to many women. Those who are covered often find it necessary to supplement basic group coverage with individual coverage. For example, the 1980 sales of disability income insurance were \$2 billion to individuals and \$5 billion through group plans. Sales of medical expense insurance as individual and family policies totalled \$5 billion.[12]

In addition, a severe problem that confronts many women is the loss of group coverage previously obtained through their own employment or that of their spouse. Continuation of coverage under an individual policy without evidence of insurability is often denied, a problem being addressed by some state legislatures.[13] Finally, even when available, continuation of coverage entails much higher charges for women than for men.

LIFE INSURANCE

Surveys of life insurance prices indicate that the differences in average mortality between women and men are not major factors in prices, as shown in Figure A. The price range among the 21 companies in this New York State Insurance Department survey is 8 times larger than the 24¢ "female discount".[14] Moreover, 10¢ of this discount can be lost through a surcharge on women for a provision to keep the insurance in force should disability prevent payment.

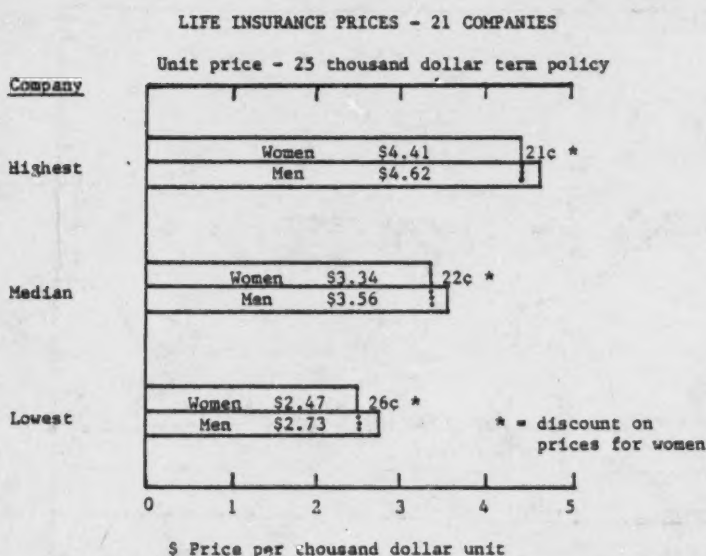


Figure A. Variation in life insurance prices and the differential between the price for women and men. Ages 25-44. From the New York State Department of Insurance. ^{15/}

Many companies offer "preferred" or "select" prices for non-smokers but, as the small print often specifies, "smokers of cigars and pipes may qualify." [16] Such discounts, applied at the discretion of the seller, lower men's prices considerably below the prices for women who are not eligible because they can't afford the larger policies or have the wrong smoking habits. Even when women are eligible, these discounts often are greater for men and so narrow, and even eliminate, the price differential between women and men.[17]

Insurers claim that women pay less than men for life insurance, but the smaller life insurance policies that most women can afford actually cost more per \$1,000 coverage than the larger policies men are buying. Life insurance policies bought in 1981 averaged \$17,000 for women and \$38,000 for men.[18] Figure B shows the adverse effects on the buyers of small policies of the typical price structure for a life insurance policy. The costs to insurance companies of payouts for death claims are not affected by policy size. (Chance of death is unrelated to policy size.) For the policy shown in Figure B, at the 1981 policy size averages, women are charged at the rate of \$4.66 per \$1,000 coverage, 18 percent more than men's \$3.94 rate.

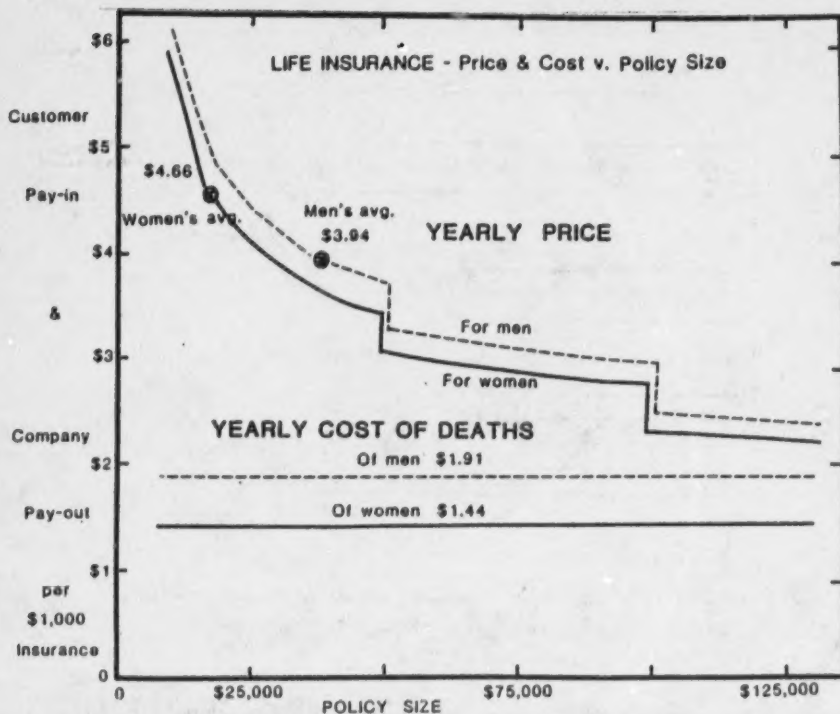


Figure B. Typically strong variation of prices with policy size for life insurance. Yearly prices for a 10 year term policy, ages 35-44. The mortality costs derive directly from mortality tables that at age 40 show 1.44 deaths per 1,000 women and 1.91 deaths per 1,000 men. ^{19/} The prices per \$1,000 insurance change rapidly with policy size at the smaller policy amounts owing to the fixed \$30 yearly "policy fee," which produces the steep price curve. The steps in the prices reflect discount "bands": 15% over \$50,000 and 30% over \$100,000. ^{20/}

The American Academy of Actuaries estimates that enactment of HR-100 would require a yearly \$360 million transfer of insurance cost to women from men.[21] This does not seem to take into account that men are more likely than women to benefit from price gradations, whereby the unit price per thousand dollars decreases as policy size increases.[22] Men, therefore, are already paying less on average than women for life insurance protection for their dependents. Is the industry threatening to raise the cost of women's life insurance even higher?

Lest it be thought that larger "discounts" for women might be an acceptable idea, be assured that it is not. NOW takes strong exception to the industry's peculiar view that requiring men to pay more than women for the same amount of life insur-

ance should be regarded as an advantage for women. This notion collapses under rational analysis. A great proportion of life insurance is bought with the intention of protecting unsalaried homemakers against the loss of their husband's income through death. Higher payment for this protection comes from family budgets and so affects both women and men.

Finally, as surviving spouses, women are again disadvantaged when payout of the policy is in the form of guaranteed income for life. As a direct result of sex discrimination, the monthly payments from the same size life insurance policy will be 10 percent to 15 percent less for surviving women than for surviving men. At this point, "wife" insurance is better protection than husband insurance.

OLD AGE INCOME INSURANCE

As is true for life insurance prices, variations in annuity prices between companies are much greater than the price differentials between women and men. Figure C shows these relationships. The range in prices is 4 to 6 times the amounts of the surcharges on women. Moreover the dollar amounts of the surcharge vary by 3 times among the companies shown. But the cost of women's "extra" longevity should be the same for all companies.

ANNUITY PURCHASE PRICES - 113 COMPANIES

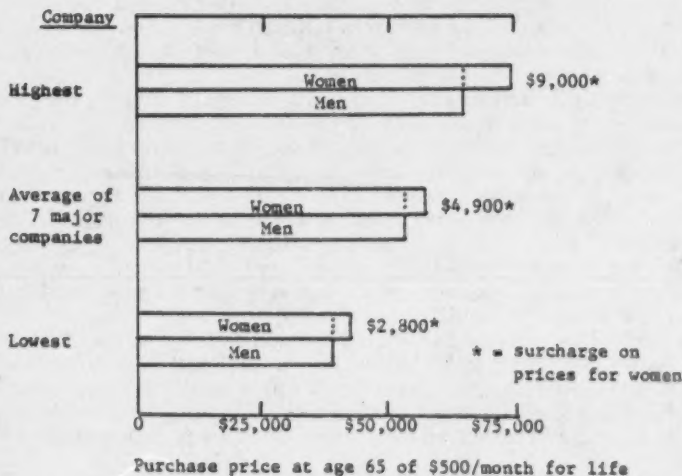


Figure C. Variation in annuity purchase prices and the differential between the prices for women and men.^{23/}

The human cost factor (longevity) in the overall expense to insurance companies of providing annuity payouts does not change abruptly. Reserves and prices are still calculated according to the 1971 Individual Annuity Mortality Tables and even older tables.^[24] Nevertheless, between April and October 1982, a major annuity company reduced its prices by more than $\frac{1}{3}$, as shown in Figure D.

ANNUITY PURCHASE PRICE - MAJOR COMPANY

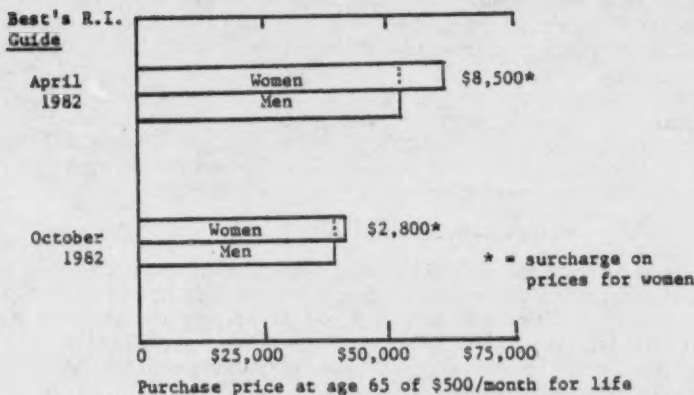


Figure D. Variation in one company's annuity purchase price and in the differential between the prices for women and men. ^{25/}

Concurrently the company's surcharge on women, which is supposed to represent only the added expense of women's longevity, was reduced by $\frac{1}{2}$. Obviously, the expenses of any mortality differences between women and men cannot be a major factor in the setting of purchase prices for annuities.[26]

The American Academy of Actuaries has predicted a 6 percent drop in the prices of individual annuities for women if sex discrimination were banned.[27] Unfortunately, the Academy has not provided an estimate of the overall sum anticipated to result from this price change, an estimate that has been provided for changes in automobile, health, and life insurance prices. This seemingly small 6 percent decrease in women's annuity prices, however, would result in large savings to individual women (for example, \$3,387 savings on an annuity to provide \$500 per month).[28] The 6 percent decrease would also result in very large and growing aggregate savings to women because annuity sales are a very fast growing market for life insurance companies, with 1981 industry sales of \$28 billion.[29]

In a widely publicized figure produced for Congressional testimony, the American Council of Life Insurance estimated at \$2 billion the annual cost of putting retirement payment on a non-discriminatory basis for women currently employed.[30] Such an estimate provides a good measure of the annual "savings" employers now effect by being able to avoid funding equal future retirement compensation for women.

No direct estimate seems to be available, however, on the amount of income that retired women are currently losing year after year as a result of past "savings" by employers through sex-based pension schedules. An idea might be gained from New York Insurance Superintendent Albert Lewis' 1982 estimate that the cost of equalizing state funded pensions retroactively to the date of the *Manhart* decision in 1978 could amount to \$19 to \$20 billion for governmental systems alone.[31] This four-year estimate suggests that several billion dollars each year is owed by state governments, but not paid, to retired workers and their spouses and to pension funds in order to provide equal retirement pay for currently employed women.

The American Academy of Actuaries cautiously testified in 1982 that "It is not clear to us whether men or women would gain more in pension benefits from S. 2204." [32]

The Academy allowed that enactment would benefit women directly in pension plans where the level of retirement income depends on the amount paid into the plan in the name of the employee (the "defined contribution" plan). Women's pension income would be raised to the level of men's with equal accumulations—an obvious "gain" for women.

The Academy also stated, however, that men would benefit from enactment of HR-100 in "certain circumstances" when retirement pay is determined by the formula: years of service times a percent of salary (the "defined benefit" plan). The Academy appears to refer to a situation in which women, as the wives of retired

men, would actually "gain" at least as much as their husbands. This result would occur in the following way.

Under present laws, retired women and men are treated equally by the service/percent salary formula when they choose a lifetime retirement income for themselves only. If the retired worker chooses instead to assure retirement income for the life of a spouse as well, the retirement income is reduced from the levels for individuals to amounts that are lower for retired men and their wives than for retired women and their presumably shorter-lived husbands.

With enactment of HR-100, pension payments to retired men jointly insured with their wives for a lifetime income would be raised to levels now provided retired women who include their husbands in an assured lifetime income. Although this improved situation for retired men would be welcome, it is most important to understand that elimination of sex discrimination in pensions obviously holds the greater prospect of improvement for dependent women. As in the cases of automobile, health and life insurance, it is families that gain when sex discrimination in insurance is outlawed.

CONCLUSION

Enforcement should be of concern in drafting any serious civil rights legislation. The strong economic incentives to oppose enactment become the incentives to avoid compliance. The continuing existence of multiple standards of legal and illegal sex discrimination facilitates non-compliance.

The lessons of Title VII of the Civil Rights Act of 1964 are with us today in the *Norris* pension case, soon to be considered by the Supreme Court. It has always been known that any service arranged for employees by an employer is not a charitable gesture but a compensation for work. Employment pensions and annuities, whether formally paid for by employers or not, and all other employee group insurance, voluntary or not, are simply compensation for work, a fact apparent since 1964. At its inception in 1972, the EEOC reiterated this obvious fact with specific reference to pensions. The Supreme Court's *Manhart* opinion again confirmed the obvious. The *Manhart* decision, however, reversed the lower court's award of pay, illegally withheld from 2,000 women, out of solicitude for the insurance and pension industries.

The consequences? Five years after *Manhart*, the courts are clogged with pension discrimination cases. Employers, in cooperation with insurance companies, continue to allot employment compensation according to the sex of the employee, thus saving huge sums at the expense of workers and dependents. The longer that employers are allowed to continue the practice, the greater becomes the sum of their liability.

NOW believes that all of the categories of discrimination addressed by HR-100 exist, are widespread, and are costly to their victims (therefore profitable to their perpetrators), and will be difficult to eradicate. Unlike other categories, however, sex discrimination is required by law for insurance, pension, and tax [33] purposes at all levels of government. Furthermore, state laws and regulations currently mandate sex discrimination by the insurance industry—to assure "fairness" between women and men customers.[34] With respect to sex discrimination, therefore, HR-100 would be a law against discriminatory laws—a super law.

The country has just failed to enact another "super law." As a constitutional principle, the Equal Rights Amendment will ban legal sex discrimination in all areas. It will provide the constitutional basis for the non-sex discrimination provisions of civil rights laws such as Title VII and the proposed HR-100. It will make them realities to be enforced, rather than admirably clear statements of principle that regulators and courts seem to have difficulty in understanding.

Will the enforcement provisions of HR-100 be adequate to end profiteering through sex discrimination in insurance? Will the legislative record fully evidence the intention of Congress that enforcement must not be compromised?

Debate is in progress and is intensifying over which of the institutions responsible—insurance industry, employers, government—must pay the cost of putting women's insurance on a non-discriminatory basis. It is clearly understood that, however that cost may be estimated, it is now being borne by women. And women are being made increasingly aware of the fact. Time-serving debate over who should pay will not be tolerated as a substitute for action to end the abuse.

NOW supports legislation to terminate immediately all sex discrimination in present insurance and pension contracts and to bar sex discrimination from all such contracts thereafter.

FOOTNOTES

1. Statement of Purpose, By Laws of the National Organization for Women.

2. Selection of characteristics to use in classifying customers for assessment of insurance costs is not independent of such considerations as administrative convenience and political acceptability, but maximization of sales must be paramount concern. That two legally approved classifications, sex and occupation, are insistently defended by the industry against strong consumer attacks makes profitability a more creditable motive than the professed concern for "fairness" to insurance consumers. (Sex and occupation are not independent of each other owing to occupational segregation. Both characteristics are proxy variables for income level.)

3. *Personal Auto Manual* (1980) by the Insurance Services Office, which is a New York based rating service representing 342 companies. Lists price-setting factors according to the "primary classifications": age, sex, marital status, with and without driver education, "only operator in household is a female age 30-64" (the factor is 0.90, which means a 10 percent discount), and others. Typical factors are 2.50 for women and 3.30 for men as unmarried 18 year old "principal operators." The rating factors multiply the "base" prices for all types of auto insurance, except where prohibited. New York State, for example, recently outlawed using factors depending on the driver's sex to multiply the price of auto theft insurance.

4. *Ibid.*

5. By Andre Maisonnier, Vice President of the Alliance of American Insurers. Statement cites a 1979 study by the California Department of Insurance. Hearing on HR-100, May 20, 1981, at 202.

6. E.g. Commonwealth Court of Pennsylvania. Opinion. Hartford Accident & Indemnity Co., Petitioner v. Insurance Commissioner of Commonwealth of Pennsylvania. Respondent No. 1184 C.D. 1980. The company based its rates on statistics that did not even count accidents according to the sex of the driver. Instead, accidents were classified "male" or "female" depending on the sex of the person listed in the policy as "principal operator"—regardless of who was driving when the accident occurred.

7. Hawaii, Massachusetts, Michigan, North Carolina, and Pennsylvania.

8. E.g. in Florida, where the State Insurance Commissioner's ruling against auto prices based on sex has been detained in a state appeals court since 1981, and a bill to accomplish the same prohibition is currently before the state legislature.

9. *1982 Time Saver for Health Insurance*, National Underwriter Publication. E.g. a typical hospital-surgical policy from State Farm Mutual, which excludes normal pregnancy, at age 40 costs women \$546—92 percent more than men's \$284 price. A typical policy from Allstate Life to provide income when disabled (exclusive of normal pregnancy), at age 35 costs women \$307—106 percent more than men's \$149 price.

10. E.g. the Health Insurance Association of America's *Source Book of Health Insurance Data*, 1981-82 edition. Unpublished data from the National Center for Health Statistics (tabulated on page 73) show the average number of days that various categories of employees lost from work through disability in 1980. Women averaged 5.1 days, only 4 percent more than the 4.9 days men averaged. The table also shows strong inverse correlations of work-loss averages with educational attainment, family income, and job status. Such relationships strongly suggest that, for women and men at the same levels in these categories, the average number of days lost from work by women should be distinctly less than by men. The magnitude of the difference in median wages—women's median wage is 40 percent less than men's—supports this conclusion.

11. 435 U.S. 702 (1978) at 710.

12. *Supra*, note 10 at 29.

13. E.g. currently in Virginia and North Carolina.

14. Perspective on this discount is given by an insurance text book: "Until relatively recently, companies charged the same premiums regardless of the sex of the insured individual. Today, however, practically all life insurance companies provide a *female discount*, charging lower premiums for females than for males." (Italics in the original.) Huebner and Black, *Life Insurance*, Tenth Ed. (1982), page 385.

15. State of New York, Insurance Department. *Consumers Shopping Guide for Life Insurance, Cost Comparison Tables*. 1982.

16. Mutual Life Insurance Company of New York. The "select premium discount" is described in *Best's Flitcraft Compend* (1982) by A. M. Best Co., on page 331.

17. *Ibid.* at 333. For 1 year term insurance, the prices per thousand dollar unit at age 40 are \$2.49 for women and \$2.63 for men. The "select" discounts are 53¢ for women and 71¢ for men, which produce the net prices \$1.96 for women and \$1.92 for men.

18. Calculations from data in the American Council of Life Insurance, *Life Insurance Fact Book*, 1981 and 1982 editions. Pages 12 and 13 of the 1982 edition contain

these data for 1981: (1) The average new ordinary policy amount purchased was \$30,080; (2) The ratio of women to men buyers (number of policies purchased) was 33 to 52; (3) Measured by amounts, the ratio of women to men was 21 to 75. (Policies on children make the numbers used in the ratios add to 100.) Calculations: let A, Aw, and Am be the average policy amounts—overall, for women, and for men. Using the data above, these may be related by two equations: (1) the averages $33Aw + 52Am = 85A$; (2) ratio of amounts $33Aw/52Am = 21/75$. Solving gives $Aw = \$16,949$, $Am = \$38,402$, and $Aw/Am = 44$ percent. From the data for 1980 in the 1981 Fact Book on pages 15 and 16, the 1980 averages may be calculated: $Aw = \$16,137$; $Am = \$32,773$, and $Aw/Am = 49$ percent.

19. Mortality tables by the Society of Actuaries.

20. 1982 *Best's Flitcraft Compend*, Allstate Life policy, page 44. For this typical policy, the price per \$1,000 insurance consists of two parts: list price + (fixed price ÷ policy size in \$1,000s). The major effect of the \$30 fixed price (the "policy fee", which is payable yearly) on the prices paid is shown by the calculations of prices for policy amounts equal to the 1981 averages for new policies bought. The price for women of a \$17,000 policy is: $\$2.89 + (\$30 \div 17) = \$4.66$ per \$1,000. The price for men of a \$38,000 policy is: $\$3.16 + (\$30 \div 38) = \$3.94$ per \$1,000. Women's 27¢ discount on the list price is effectively reduced if the popular rider is purchased to continue the policy in force without payment while the insured is disabled and unable to work. The price of this rider per \$1,000 insurance at age 35 is 57¢ for women and 44¢ for men. Women's net discount is thereby reduced from 27¢ to 14¢ per \$1,000.

21. American Academy of Actuaries, Statement on S. 2204, Fair Insurance Practices Act, hearing on July 15, 1982, at 4.

22. The grading of life insurance prices by policy size (through use of such devices as "policy fees", discount "bands", and a different policy with its own price lists for each policy size range) have long been a consumer issue. In the section entitled "Premium-Rate Discounts," Huebner and Black wrote (*supra*, note 14 at 384): "The National Association of Insurance Commissioners has passed a resolution that states, in effect, that there is not inherent discrimination in the principle of gradation of premiums by size of policy." The authors, however complete their discussion with this: "It should be remembered, however, that the total amount necessary to cover expenses is not changed by such gradations, and the lower-amount policies must of necessity pay a higher rate to offset the 'discount' granted to the larger-amount policies." Women customers, buying smaller policy amounts on average, are disproportionately paying the higher rates.

23. *Best's Retirement Income Guide*, 1982-Volume II, October, at 102.

24. *Supra*, note 14 at 310.

25. *Supra*, note 23 at 102, and 1982 Volume I, April, at 92.

26. In their brief on the *Norris v. Arizona* Title VII pension case (to be heard by the Supreme Court in 1983), "Eight Individual Actuaries" tabulated the 1982 monthly prices for an annuity from Metropolitan Life. The range in prices over the year was twice the differential in prices between women and men. They concluded from such data that if the court found in favor of the women, "the insurance industry would not be revolutionized" by a ban on sex-based prices for annuities.

27. *Supra*, note 21 at 3.

28. From the average purchase price shown in Figure C.

29. ACLI 1982 *Life Insurance Fact Book* at 55.

30. ACLI document dated November 24, 1982 states that the estimate was made in April, 1982. Officials of ACLI have given the estimate to reporters, but it is not contained in the written ACLI testimony against S. 2204 on July 15, 1983.

31. Albert B. Lewis, *The Unisex Issue: What Price Equality?*, *Best's Review*, Life/Health Edition, March 1982, page 116.

32. *Supra*, note 21 at 4.

33. E.g. a greater portion of women's annuity income is subject to income tax than men's. With women's greater life expectancy, the Internal Revenue Service assumes that the proportion of interest (which is taxable) to return of the amount spent on the purchase is greater for women than men. (Women's smaller retirement incomes are thus more heavily taxed.)

34. E.g. Fla. Stat. Ann. § 626.9541(15) (h) (1977) (Supp. 1980-81) "No insurer shall, with respect to premiums charged for automobile insurance, unfairly discriminate solely on the basis of age, sex, marital status, or scholastic achievement."

The CHAIRMAN. Thank you.

Ms. Wilson.

Ms. WILSON. Mr. Chairman, Senator Lautenberg, thank you for the opportunity to appear before you today. I am Kathy Wilson, chair of the National Women's Political Caucus, a nationwide multipartisan organization dedicated to electing and appointing women to policymaking positions at all levels of government and to speak out on issues of concern to women.

The caucus applauds this committee and you in particular, Mr. Chairman, for taking a leadership role on the issue of sex discrimination in insurance. Blatant sex discrimination is widespread throughout the insurance industry, affecting the financial security of many women and their families. The issue at hand today is not whether the insurance industry discriminates on the basis of sex. It does. Our concern here is the extent to which this practice is unfair to women and inconsistent with national civil rights policy.

The industry claims that discrimination is a neutral term, that it is a rational tool in classifying policyholders in order to protect from financial risk, but we know from our many years of working for equity that discrimination on the basis of sex most often works to the disadvantage of women.

The insurance industry may claim to fairly discriminate, but in practice we know that discrimination is almost always unfair. Sex classification is not only unfair and burdensome to women, it is also largely irrelevant and artificial. Criteria other than sex, such as smoking, mental history, driving record, occupational or recreational activities, are better indicators of the insurer's potential risk.

The insurance industry uses sex as the primary distinction in determining types of insurance offered, options, and rates. We strongly believe that this practice should be discontinued, and that individuals should not be treated as members of an arbitrarily classified group. The best way to insure the equitable treatment of women is to eliminate gender-based distinctions.

I will confine my remarks to the area of women and health insurance. The problems women face in other forms of insurance are addressed in my full statement.

In light of the high cost of medical care today, the danger of inadequate health coverage is great. Women often pay higher rates than men for identical health coverage, even though men file a greater number of accident claims. An Iowa study revealed that women pay as much as 15 percent more than men, while a 1975 Illinois survey of seven companies showed that women pay an average of 6 to 8 percent.

One of women's central medical concerns is pregnancy. Here is where disability insurance access is limited, and adequacy lacking. Although the 1978 Pregnancy Disability Act requires that pregnancy and related conditions be treated as other disabilities, it covers only employee group policies. In individual and private group policies, maternity coverage is still routinely excluded. Where maternity coverage is available, it is expensive and limited.

A Michigan study done in 1975 showed that insurance plans covered less than half of the needed medical costs of maternity. A 1974 Pennsylvania study showed that firms used 1958 hospital rates to establish the maximum limit of maternity coverage. Insurance companies defend this limited coverage by arguing that preg-

nancy is a voluntary condition, but health policies often cover such voluntary procedures as vasectomies and cosmetic surgery. While gynecological disorders are often excluded from coverage, exclusively male conditions are rarely excluded.

Underwriting practices in health insurance assume that women are dependent upon their husbands. The husband's insurance policy is considered the primary policy when benefits are claimed for dependents, even though the mother's policy may be more extensive. Oftentimes the wife must prove that she is her husband's provider before her policy can cover him, and many single women parents simply cannot get coverage for their dependents.

Let me summarize some of the other problems discussed in my full statement. In the area of disability insurance, coverage is almost completely unavailable for homemakers. Part-time workers, 72 percent of whom are women, have very limited access to disability insurance. When available, women are likely to pay more than men for identical coverage. Often the scope of coverage is more narrow for women.

In the area of life insurance and retirement annuities, the industry uses sex-based tables to set rates. Because women as a group live longer than men, women must pay higher premiums for equal benefits, or pay equal premiums for lower benefits. Since men must pay premiums for coverage lower than women's, they must opt for more insurance. Since women are the beneficiaries, the consequences of men taking smaller amounts of insurance fall on women.

These are some of the problems women face in obtaining insurance. You will be hearing more details on these and other problems throughout the day of testimony. I must emphasize that under present industry practices, these problems are impossible to overcome. I ask you to think for a moment of the devastating impact these inequities have on the actual lives of women and their families.

Today, over 50 percent of all women are employed. The vast majority of them, 74 percent, work out of economic necessity.

Thank you, Mr. Chairman, for your interest and your continuing commitment to women.

[The statement follows:]

STATEMENT OF KATHY WILSON, CHAIR, NATIONAL WOMEN'S POLITICAL CAUCUS

Mr. Chairman and Members of the Committee, thank you for the opportunity to appear before you today. I am Kathy Wilson, Chair of the National Women's Political Caucus, a nationwide, bipartisan organization of 73,000 members. The Caucus is dedicated to electing and appointing women to policy making positions at all levels of government, and to speaking out on issues of concern to women.

The Caucus applauds this Committee for taking a leadership role on the issue of sex discrimination in insurance. Blatant sex discrimination is widespread throughout the insurance industry, affecting the financial security of many women and their families.

The issue at hand today is not whether the insurance industry discriminates on the basis of sex. It DOES. Our concern here is the extent to which this practice is unfair to women and inconsistent with national civil rights policy.

The industry claims that discrimination is a neutral term, that it is a rational, fair, and even necessary means of classifying policyholders in order to predict financial risk.

But we know from our many years of working for equity that discrimination on the basis of sex most often works to the disadvantage of women. The insurance in-

dustry may claim to fairly discriminate, but in practice, we know that discrimination is almost always unfair.

Sex classification is not only unfair and burdensome to women, it is also largely irrelevant and artificial. Criteria other than sex, such as smoking, medical history, driving record, occupation or recreational activities are better indicators of the insurer's potential risk.

The insurance industry uses sex as the primary distinction in determining types of insurance offered, options, and rates. We strongly believe that this practice should be discontinued, and that individuals should not be treated as members of an arbitrarily classified group. The best way to ensure the equitable treatment of women is to eliminate gender-based distinctions.

Let me briefly review with you some of the ways in which gender distinctions work to the disadvantage of women seeking adequate insurance protection.

DISABILITY INSURANCE

The insurance industry fails to fully recognize the economic importance of the work women perform—both paid and unpaid. Women thus have limited access to disability insurance. Disability insurance is essential to protect against loss of earnings due to inability to work. Homemakers, who perform undeniably valuable work within the home, are almost completely prevented from obtaining disability insurance. Part-time workers, 72 percent of whom are women, and those in occupations with high proportions of women such as domestic workers and waitresses, have very limited access to disability insurance as well.

Even where disability insurance is in fact available to women, women pay more than men for identical coverage. A Colorado study showed women pay from 45 to 115 percent more for disability coverage, while in New York, a study revealed rates up to 150 percent higher for women. Actuarial tables are still in use that are based on long outdated statistics. Employment patterns for women have changed dramatically over the past 30 years. Our insurance protection must keep pace with these patterns.

The scope of disability benefits also work to women's detriment. Waiting periods, the time before benefits are payable, are generally longer for women. The benefit period, the duration the benefits are paid to the insured, and the basic period, the time the worker is considered totally disabled, are shorter for women. For instance, a male in a low-hazard occupation can obtain a policy with a benefit period of ten years. The policy of a woman in the same hazard classification is usually limited to a two year benefit period.

These gross inequities exist even within specific job categories. That is, a woman and a man with the very same job, facing equal risks, cannot get equal protection against debilitating injuries. A classification system based on sex-neutral criteria would be a giant step toward eliminating these inequities.

HEALTH INSURANCE

In light of the high costs of medical care today, the danger of inadequate health coverage is great. Women often pay higher rates than men for identical health coverage, even though men file a greater number of accident claims. An Iowa study revealed that women pay as much as fifty percent more than men, while a 1975 Illinois survey of seven companies showed that women pay an average of sixty-eight percent more.

One of women's central medical concerns is pregnancy. Here, as with disability insurance, access is limited and adequacy lacking. Although the 1978 Pregnancy Disability Act requires that pregnancy and related conditions be treated as other disabilities, it covers only employee group policies. In individual and private group policies, maternity coverage is still routinely excluded. Where maternity is available, it is expensive and limited. A Michigan study done in 1975 showed that insurance plans covered less than half of the needed medical costs of maternity. A 1974 Pennsylvania study found that insurance companies use 1958 hospital rates to establish the maximum limit of maternity coverage.

Insurance companies defend this limited coverage by arguing that pregnancy is a voluntary condition. But health policies often cover such voluntary procedures as vasectomies and cosmetic surgery. While gynecological disorders are often excluded from coverage, exclusively male conditions are rarely excluded.

Underwriting practices in health insurance assume that women are dependent upon their husbands. The husband's insurance policy is considered the primary policy when benefits are claimed for dependents, even though the mother's policy may be more extensive. Often times a wife must prove that she is her husband's

provider before her policy can cover him. And many single women parents simply can't get coverage for their dependents.

LIFE INSURANCE AND RETIREMENT ANNUITIES

The use of sex-based actuarial tables in setting life insurance and retirement annuities is near universal. The insurance industry justifies this discriminatory practice by claiming that women, on the average, live seven years longer than men. Because of this, most women either pay higher premiums for annuities than men, but receive identical coverage or pay similar premiums but receive smaller payments upon retirement.

But in life insurance coverage, the insurance industry uses a three year difference in mortality between men and women. Because women, on the average, live longer than men, their premiums on life insurance are lower. Premium rates for women are calculated on male-based mortality rates and then "set back" three years. But women's premiums would be even lower if the industry were consistent in its mortality figures and used a seven year "set back." Ironically, since men must pay higher life insurance premiums for coverage identical to women's, they sometimes opt for smaller amounts of insurance. And since most men designate women as their beneficiaries, the consequences of men taking smaller amounts of insurance fall on women.

The problem with sex-based actuarial tables is clear: by classifying an individual as part of a large and diverse group, such as all women, the perceived needs of that individual are bound to be distorted. Statistics show that while women do tend to outlive men, the difference is relatively small. In one study, less than fourteen percent of the women did not match the death ages of the men.

These are just some of the problems women face in obtaining insurance. You will be hearing more details on these and other problems throughout this day of testimony. I must emphasize that, under present insurance industry practices, these problems are impossible to overcome.

I ask you to think for a moment of the devastating impact these inequities have on the actual lives of women and their families. Today over fifty percent of all women are employed. The vast majority of them—seventy-four percent—work out of economic necessity. They are either the sole support for themselves and their families, or are supplementing their husbands' incomes so their families can survive in today's economic hard times. The economic contribution of the full-time homemaker is indisputable. To replace the many and varied jobs of a homemaker is beyond the economic limits of the majority of American families. It is essential that women be able to obtain the coverage necessary to provide financial security for their families.

The Fair Insurance Practices Act is a must. It is a must for the millions of women who are currently denied access to insurance coverage. It is a must for the millions of women whose pocketbooks are drained by unfair insurance rates. It is a must for this Congress to demand that individuals be treated not simply as members of a gender, racial, religious or ethnic group, but as individuals with individually applied standards.

Thank you, Mr. Chairman, for your interest and your continuing commitment to eliminating discrimination.

The CHAIRMAN. Thank you very much.

Ms. BROSSAU. Did I pronounce it right, Brosseau?

Ms. BROSSAU. Thank you, Mr. Chairman—

The CHAIRMAN. Let me interrupt just a moment to explain to Mayor Koch what we are going to do. Ed, I am going to finish this panel and question them. Then I am going to put you on next, if that is OK. Thank you.

Ms. BROSSAU. My name is Irma Brosseau. I am executive director of the National Federation of Business and Professional Women's Clubs, often called BPW. We were founded in 1919 to improve the status of women. Today we have a membership of over 155,000 women and men living in all 50 States.

We appear before you today in support of S. 372, the Fair Insurance Practices Act. BPW has been concerned about insurance discrimination for more than a decade, and we believe it is time to eliminate discrimination in this major sector of the economy.

Women, as you have heard others say, are severely discriminated against in the availability of insurance and the terms and conditions of some kinds of insurances and the insurance rate structure. This discrimination damages millions of women whose need for affordable insurance coverage is greater now than any time in the past.

To save time, I will confine my oral remarks to the issue of disability insurance.

It is more difficult for women to get disability coverage than it is for men. Women whose place of business is in their own homes are often denied coverage, while men similarly situated are insured. Part-time workers, both men and women, usually cannot get disability coverage, and since more than 70 percent of the part-time labor force is female, this exclusion negatively affects women in a very disproportionate way.

For homemakers, the situation is particularly bleak. Disability coverage for homemakers is generally not available, even though we all know that a family can face great financial burdens if the homemaker is disabled.

Discrimination in the rate structure is blatant. Even when women can get disability coverage, it costs more, and they receive lower benefits. In 10 out of 13 companies surveyed in Pennsylvania, premium rates for women were consistently higher than for men with equal or better coverage.

At Business and Professional Women's headquarters in February our staff performed its own survey of several companies in the Washington, D.C., area to see if this continues to be the case. We contacted four companies, and found that higher rates for women were still the rule. Using the example of a husband and wife, both in their thirties, who were starting a business together, we found that rates for the woman were from 17 to 41 percent higher. The dollar differences ranged from \$75 per year more for very limited coverage to an astounding \$500 more a year for lifetime coverage.

Not only do women pay higher rates for disability insurance. They often cannot get as much coverage as men. Maximum benefits allowed for women are lower than those offered for men, and basic benefit periods are often substantially shorter than for men in similar occupations. These limitations on benefits and benefit periods imply that women's earnings are marginal to their families or worse, that women are more likely to malingering than men.

The higher costs and difficulty with availability which are common in most types of disability insurance place a special burden on the self-employed woman or the woman who is just starting a business. Too often the self-employed woman will forego disability coverage because it is too expensive, leaving her and her family without any protection.

We are also concerned that most private disability plans do not include any coverage for pregnancy disability, as in health insurance. When pregnancy coverage is included, the cost of the coverage is extremely high, the benefits limited. Such exclusionary treatment forces women to shoulder all of the financial risks of bearing children.

Some companies will justify the higher rates women pay for disability insurance by calculating in the factor of maternity, even

when, as an insurance underwriter testified before this committee in July, their individual policies do not include maternity coverage.

BPW firmly believes that the justifications which the industry uses for continuing these practices are not supportable, and that the industry can devise sound business practices that are not based on discrimination against half of the Nation's population.

The debate about nondiscrimination in insurance has become very complex, but the basic argument is a very simple one, whether or not sex discrimination should be allowed in an important area of American life. Since the sixties, the trend has been away from judging individuals on the basis of their race, color, religion, national origin, or sex. Passage of S. 372 would continue this healthy trend, and assure that all Americans are able to look forward to a future of economic security and justice.

[The statement follows:]

STATEMENT OF IRMA BROUSSEAU, EXECUTIVE DIRECTOR, NATIONAL FEDERATION OF BUSINESS AND PROFESSIONAL WOMEN'S CLUBS, INC.

The National Federation of Business and Professional Women's Clubs, Inc. (BPW) was founded in 1919 to improve the status of women in the workforce. Since its establishment over 64 years ago, the objectives of the federation have remained the same: to elevate the standards and promote the interests of women in business and the professionals and to promote full participation, equity and economic self-sufficiency for working women. Today, BPW has a membership of over 155,000 women and men, living in all fifty states and the District of Columbia, Puerto Rico and the Virgin Islands. There are over 3,500 BPW clubs across the nation, with at least one club in every Congressional district in the United States.

We appear before you today in support of S. 372, the "Fair Insurance Practices Act." BPW has been concerned about insurance discrimination for more than a decade. We believe that the time has come for legislation to be enacted to eliminate discrimination in this major sector of the economy. Sex discrimination in insurance affects the availability of insurance to women, the terms and conditions of some types of insurance, and the rate structure. This discrimination damages millions of women whose need for affordable insurance coverage is greater now than at any time in the past.

The role of women in our society has changed dramatically, with women now constituting almost half of the American labor force. Well over a million women a year were added to the workforce during the decade of the seventies. Projections indicate that by 1990, 95 percent of American women aged 16 and over will be in the labor force, compared to 52 percent in 1981. Despite this trend, the insurance industry continues policies and practices that reinforce the current inferior legal and economic status of women.

Women work for the same reasons that men work—to support themselves and their families. Nearly two-thirds of all women in the labor force in 1978 were single, widowed, divorced or separated, or had husbands who earned less than \$10,000 a year. In 1981, 51 percent of all married women were working, and full-time working wives contributed an average of 38 percent of their families' income. These women need equal access to insurance.

Sex discrimination in insurance is widespread. Insurance companies use sex-based actuarial tables to determine premium rates and benefits in life insurance and pensions and annuities. Gender-based tables are used for setting rates in health and disability insurance. Common insurance practices discriminate against women in the availability of options and in the terms and conditions of insurance. A brief review of the various types of insurance illustrates the pervasiveness of sex discrimination. Health Insurance: Women frequently pay higher rates than men for identical coverage. An Iowa study showed women pay as much as 50 percent more than men for the same policies. A 1975 survey of seven insurance companies in Illinois showed that, on average, women paid 68 percent more than men for health insurance. Many health insurance policies exclude maternity coverage entirely. When maternity coverage is available, it is expensive and limited in scope. A Michigan study showed that health insurance plans covered only 38 to 44 percent of actual maternity costs. Maternity is one of the only, if not the only, condition where policies offer a flat-rate benefit, regardless of cost. In the Illinois study cited above, no company ap-

plied flat-rate benefits or additional premiums for any other condition. Further, many health insurance policies exclude or limit coverage of other medical conditions exclusive to women, such as gynecological disorders, while exclusively male conditions are rarely excluded.

In health insurance, underwriting practices continue to be based on the assumption that women are dependent upon their husbands. For example, a husband's insurance policy is often assumed to be the primary policy when benefits are claimed for dependents, regardless of which parent's policy is more extensive. In other cases, a wife must prove that her husband is financially dependent upon her before she can cover him under her insurance.

Disability Insurance: Women have greater difficulty getting disability coverage than men. Women in certain occupations, such as domestic workers and waitresses, do not have access to coverage, while men in similar occupations are able to get coverage. Women who work out of their homes are often denied coverage, while men similarly situated are insured. Part-time workers, both men and women, usually cannot get coverage. Since more than 70 percent of the part-time labor force is female, this exclusion has a disproportionately negative effect on women. Disability coverage for homemakers is also generally unavailable even though there are now studies which show the replacement costs a family must bear if the homemaker is disabled.

Even when women can get disability coverage, it costs more and the benefits are lower. In 10 out of 13 companies surveyed in Pennsylvania, premium rates for women were consistently higher than for men with equal or better coverage. An informal survey of four companies in the Washington, D.C. area conducted in February by BPW showed that for a husband and wife (both in their early thirties) starting a business, the rates for the woman were from 17 to 41 percent higher. The dollar differences ranged from \$75 per year more for very limited coverage to over \$500 per year for lifetime coverage. Companies sometimes classify men and women in the same occupations in different risk categories, putting women in the higher risk category and charging them higher rates. Maximum benefits allowed for women are often lower than those offered for men and basic benefit periods for women are often substantially shorter than for men in similar occupations.

The higher costs and difficulty with availability which are common in most types of disability insurance place a special burden on the self-employed woman or the woman who is just starting a business. Too often, the self-employed woman will forego disability coverage because it is too expensive, leaving her and her family without any protection.

The insurance industry justifies differential rates and benefits for women in disability insurance on the grounds that women are more likely to be disabled than men. The data on this is inconclusive. A study done in New York of two unions showed that while in one case female members of the union had higher disability costs, in the other case, the female members had shorter average length of disability, lower morbidity and lower average costs than the male members.

The limitations on benefit amounts and benefit periods imply that women's earnings are "marginal" to their families, or worse, that women are more likely to malingering than men. Both of these assumptions are clearly false, but major differences in terms of disability policies for women are still prevalent.

Further, most private disability plans do not include any coverage for pregnancy disability. As in health insurance, when pregnancy coverage is included, the costs of the plans are extremely high and the benefits limited. Such exclusionary treatment forces women to shoulder all of the costs of bearing children. Some companies justify the higher rates women pay for disability insurance by calculating in the factor of maternity even when their individual disability policies do not include maternity coverage. The industry argues that exclusion of maternity coverage is acceptable because pregnancy is a "voluntary" condition. But as Congress recognized in the Pregnancy Disability Act of 1979, in a society that continues to place a high value on motherhood, the costs of bearing children should be shared.

One of the effects of sex discrimination in health and disability insurance which has not been closely scrutinized is the impact on business, especially small business. Employers who have a substantial number of women in their workforce, even if the workforce is not predominantly female, will pay more for group health and disability plans. Higher costs could lead employers to cut benefits for employees and could even encourage employment discrimination.

Property, Auto and Liability Insurance: Young women generally pay less than young men for auto insurance. This practice has now been outlawed in several states and the effect on rates has been marginal. The advantage women have in auto insurance rates generally disappears on marriage or after age 25. Yet, women

overall have fewer accidents than men. The industry is silent on why it does not continue to give women a rate advantage if sex is the significant factor in determining risk. An analysis by the National Insurance Consumer Organization, submitted to the House Subcommittee on Commerce, Transportation and Tourism says that "Contrary to the industry's claims that premiums would rise for young women by \$700 million, it appears that the average young woman's premium would change marginally, if mileage were also used. If mileage were used at all ages, premiums would fall significantly for cars driven only by women (by about 25 percent) for those women over 25-years old."

Discrimination against women in property and liability insurance is less overt, but no less prevalent, and discriminatory practices are still commonplace. For example, women sometimes have more difficulty getting homeowners' insurance than similarly situated men. Business-related insurance, like business credit, continues to be an area where women are treated unequally. Commercial credit is often linked to adequate insurance coverage for a business and many women have experienced discrimination in applying for commercial property and liability insurance. Too often, women are prevented from starting or expanding a business because they cannot get the insurance coverage necessary for the operation of the business. When applying for business insurance, women are repeatedly faced with sex-stereotyping by individual agents and underwriters.

Life Insurance/Pensions and Annuities: The insurance industry uses actuarial tables to set rates in life insurance and rates and benefits for pensions and annuities. Women, as a class, live six to nine years longer than men, as a class. Based on this fact, women participating in private pension or annuity programs are required to pay higher premiums for equal benefits or to receive lower monthly benefits if their premiums are equal.

In life insurance, women have a slight advantage in the rates they pay. Women's rates are generally calculated on a three-year setback from men's rates. The "advantage" that women get in life insurance is often insignificant. For example, one term-life policy offered by a major insurance company for non-smokers includes a differential of 11 cents a month between men's and women's rates at age 30 on \$100,000 of coverage. For women and men at age 40, the differential in rates is less than \$2.00 a month.

It is interesting to note that where the increased longevity of women is an advantage, as in life insurance, most companies continue to use only a three-year setback, but where it is a disadvantage, as in pensions and annuities, the full six to nine year differential is used. While women pay slightly less for life insurance, options routinely available to men are often denied to women. Guaranteed purchase options to buy additional coverage without evidence of insurability are not available equally to men and women. Waiver of premium options are often not available to women or, when offered, cost women more than they cost men. Women are sometimes discouraged from purchasing insurance over a "normal" amount, while men with the same incomes have no difficulty securing the higher amounts of insurance.

The insurance industry argues that because women live longer than men, it is necessary to use sex-based mortality tables in setting rates and benefits. They argue that differential rate structures based on sex are not unfair, because longevity differences between the sexes are biological in origin and not related to socio-economic factors.

These arguments do not hold up under close scrutiny. BPW believes that sex discrimination is wrong and should not continue to be sanctioned in any area of American life. We do not believe that there is "fair" discrimination and "unfair" discrimination. We firmly believe that the principle of equity should govern all of our activities and that no major segment of our economy should be exempt from this principle.

The parallels between race and sex discrimination are clear. Black men, as a class, have a shorter life expectancy than white men. Using the argument the industry uses to justify gender-based discrimination, black men should pay more for life insurance and less for pensions/annuities than white men. But, the insurance industry itself says that it does not discriminate in "premium rates or in availability of coverage on the basis of race, color, religion or national origin." They say, "to do so would be contrary to both public policy and to general ethics." Supporters of eliminating discrimination believe that these same social and ethical considerations should apply to sex as a classification.

Recent court decisions have attacked the idea of treating individuals as part of a racial or sexual class. In *City of Los Angeles, Department of Water and Power v. Manhart*, the Supreme Court ruled that employer-operated pension plans which used sex-based differentials in determining rates were in violation of Title VII of the

Civil Rights Act of 1964. In *Manhart*, the Court said that even a true generalization about the behavior of the class to which an individual belongs would be insufficient reason for treating the person differently because "there is no assurance that any individual woman (or man) will actually fit the generalization."

In fact, the use of sex-based classifications is a distortion of the concept of the "average" man and the "average" woman. Statistically, it is only a small group of women who live longer than a small group of men. Of 100,000 males and 100,000 females retiring at age 65, 86.2 percent of the women had the same death age as 86.2 percent of the men. Thus, all women receive lesser monthly retirement benefits or pay more for equal benefits when less than 14 percent of the women actually live longer.

While the industry assumes that the differences in longevity between men and women are biological, others cite "typically male behavior patterns" which clearly contribute to earlier death ages for men. These factors, such as smoking, alcohol abuse, high stress or dangerous occupations, are now more common among women, but it is still too early to tell what effects this will have on women's longevity.

If insurance is supposed to spread risks over a participating population, the industry can certainly develop nonsex-based rates and payments to reflect the experience of the whole population. Insurance companies can use other variables, such as smoking, occupation, etc., which are better predictors of longevity and health, to establish rate classifications.

The overall impact of insurance discrimination on women is negative. Women who need health or disability coverage must pay more for less protection. Women must pay more or receive smaller benefits in pensions and annuities. They face discrimination in the availability of options in life insurance and differential treatment in properly and business insurance.

Some have said that the elimination of sex discrimination would endanger the financial soundness of the insurance industry. This same argument was used against the Equal Pay Act, the Civil Rights Act of 1964 and the Equal Credit Opportunity Act by business and financial institutions. In retrospect, we see that the fears of employers and the banking industry were greatly exaggerated. Much attention has been paid to the cost of implementing this legislation, both to consumers and to the insurance industry. Insurance industry cost estimates have varied greatly. For example, industry estimates on the costs of implementing nondiscrimination in pensions and annuities have ranged from \$5.5 billion down to \$2 billion. Many have also predicted that in life and auto insurance where women enjoy a marginal advantage, the costs to individual women consumers would skyrocket. Yet, there are competitive companies now doing business which do not use sex as a classification in auto insurance and most companies use gender-neutral tables for employer-provided life insurance. In those states where sex can no longer be used for establishing auto insurance rates, the markets have not been disrupted and the rate adjustments have been minimal. We firmly believe that the insurance industry can devise sound business practices which are not based on discrimination against half of the nation's population.

S. 372 is a sound approach to eliminating discrimination in insurance. The enforcement provisions included in S. 372 are simple and not overly complicated or cumbersome. Primary responsibility for enforcement falls to the states. If states fail to act, individuals with complaints can bring suit in either state or federal courts. No federal agency has administrative responsibility for investigation of complaints or enforcement. In limited circumstances, the Attorney General is authorized to bring a lawsuit where there is an issue of "general public importance" or a pattern or practice of refusal to comply with the statute. BPW believes that once S. 372 is law, most of the insurance industry will institute policies and practices which comply with the law. Therefore, S. 372 proposes effective, but not burdensome, remedies for insurance discrimination.

The debate about nondiscrimination in insurance has become very complex, and for some, emotional. But, the basic argument is a simple one—whether or not sex discrimination should be allowed in an important area of American economic life. Since the 1960's, the trend has been away from judging individuals on the basis of race, color, religion, national origin or sex. Passage of S. 372 would continue this healthy trend and assure that all Americans are able to look forward to a future of economic security and justice.

The CHAIRMAN. Thank you.

Dr. Mendelson.

Dr. MENDELSON. Thank you, Mr. Chairman and Senator Lautenberg.

I am Johanna Mendelson, director of public policy for the American Association of University Women, a national organization of over 190,000 members.

It is in this spirit that we strongly urge the passage of the Fair Insurance Practices Act. Insurance companies control 12 percent of the Nation's disposable income. It is time to end sex discrimination in one of America's largest industries.

The insurance industry deliberately understate the scope and severity of sex discrimination facing female customers today. The industry defends the custom of charging different premium rates for men and women, but it also fails to address other discriminatory and equally common place practices. Contrary to the industry's claims, women meet with unfair treatment in all forms of insurance.

Companies providing disability, health, life and pension policies routinely deny women equal access and equal benefits or adequate coverage for their basic insurance needs.

I will confine my remarks to the auto insurance industry, and my full statement has been made available for the record.

When we talk about sex discrimination in insurance, the first reaction one receives is, why would women complain? Do they not pay lower rates than men? Will not insurance rates go up significantly with the passage of this bill?

In fact, only young, unmarried women under the age of 25 pay lower rates than men. The aging process actually increases women's insurance rates. In fact, both men and women drivers now pay rates which often do not reflect their individual driving records, but rather reflect the inaccuracies of broad statistical groupings compiled by sex instead of by mileage driven.

The truth is that gender-based tables for automobile insurance have historically been based on stereotypes rather than facts. One need only look at the origins of the early classifications plans in different States to recognize the preconceived stereotypes that young drivers, in particular young males, had a higher number of accidents than other groups of drivers, was the way the classification went. In order to allow others to enjoy lower insurance rates, all males under the age of 25 were listed as a separate class for the sake of insurance.

At that time it was thought that females did not drive very much. Therefore, these categories are the ones that are still presently established and these were mainly established by guesswork. Sex is utilized as a proxy or an indirect measure of the other more important direct variables such as mileage and maturity.

It now appears that when studies are adjusted for mileage, the common assertion that male drivers have more accidents than female drivers, does not stand. A study prepared by the Alliance of American Insurers, a trade association, purportedly showed that male drivers had more accidents and that those accidents were more expensive than those involving females. This study showed males under age 25 to have an average loss of \$307.46 per car compared to the average loss per car of \$193.92 for females under the age of 25.

However, when mileage differences were accounted for females had many more accidents per mile and were 50 percent more expensive to insure on a mile per mile basis.

A California study also reaffirmed the importance of mileage figures when it proved that on a mileage-adjusted basis in most age groups females had more accidents than males. Thus the difference between males and females that exists on a per vehicle mile basis is a function of the decreasing rate of accidents per additional mile as total driver mileage increases.

Accident propensity difference between males and females is less than 5 percent when adjusted for accident propensity by annual driver mileage. When factors other than sex are taken into account, it appears that the driver's sex has little or no impact on driving performance. With relatively simple adjustments for mileage and age, the accident differential between males and females has been reduced to less than 5 percent.

Four States—Michigan, Massachusetts, North Carolina, and Hawaii—have already eliminated gender-based tables for automobile classification. These steps have taken a first step in eliminating the statistical morass for automobile insurance.

Insurers are also moving to unisex auto ratings, although we believe that only with a mandate from this Congress will a national unisex rating system end the guilty by association that gender-based rating systems now imply. Even the General Accounting Office in a 1979 study questioned sex-based classification systems in auto insurance, but also noted that "State insurance departments have unquestionably accepted pricing systems that are convenient for insurance companies, rather than effectively protecting the legal rights of their citizens." Today young males are guilty until the aging process proves them innocent.

Marital status is yet another curious factor of actuarial legerdemain in the area of auto insurance. When a young male under 25 applies for auto insurance as a married individual, his wife's driving record is not considered, but his rate is substantially lower than if he were to apply as a single person. This is the only case, in insurance, where early marriage actually pays.

[The statement follows:]

STATEMENT OF DR. JOHANNA MENDELSON, DIRECTOR, PUBLIC POLICY DEPARTMENT,
AMERICAN ASSOCIATION OF UNIVERSITY WOMEN

I am Dr. Johanna Mendelson, Director of Public Policy for the American Association of University Women, a national organization of over 190,000 members. We are proud of our 100-year commitment to equality and human rights. It is in this spirit that we strongly urge the passage of the Fair Insurance Practices Act, S. 372. Insurance companies control twelve percent of the nation's disposable income. It is time to end sex discrimination in one of America's largest industries.

Mr. Chairman, our organization has testified on the subject of insurance discrimination many times. We recognize the work that you and other members of Congress have done to bring to public attention the importance of this legislation. Quite simply, the Fair Insurance Practices Act represents another step toward economic and social justice. We applaud you and the committee for your efforts to bring the principles of fairness to individuals in the insurance practices of today.

SEX DISCRIMINATION IN THE INSURANCE INDUSTRY

The insurance industry deliberately understates the scope and severity of sex discrimination facing female customers today. The industry defends the custom of charging different premium rates for men and women, but it also fails to address

other discriminatory and equally commonplace practices. Contrary to the industry's claims, women meet with unfair treatment in all forms of insurance. Companies providing disability, health, life and pension policies routinely deny women access, equal benefits or adequate coverage for their basic insurance needs.

Today, women are entering the work force at a rate of almost 2 million each year. Over half the work force today consists of women. Who are these women? 53 percent are mothers with children of school age or younger; 56 percent are married with husband present; 27 percent of those have husbands who earn less than \$13,000 a year; 25 percent are never married, and another; 20 percent are widowed, separated, or divorced; and 14 percent of all families, or one in every 7, are headed by women.

The economic realities of today demand that women work to support their families; not for surplus second incomes, but to help break even in the race against inflation. These women, like men, are dependent on fringe benefits to buffer their paychecks against rising costs. Insurance is an absolute necessity to help workers hedge against troubled times and to see their families through periods of income loss due to accident, illness, and death. Yet women who are already confronted with such financial barriers as earning 59 cents for every dollar earned by men, are further penalized because of their sex and are continuously denied the right to a secure and insured tomorrow.

DISABILITY INSURANCE

Traditionally, women have been regarded as secondary customers in a market geared towards providing financial security for the breadwinner rather than the breadmaker. As a result, disability insurance, the primary vehicle for replacing lost income due to injury or illness, has been tailored to the needs of the male employee and is largely unavailable to the woman working at home.

For example, in 1975, 57 percent of all married women were fulltime homemakers, providing valuable services, including child rearing, housekeeping, and cooking. Yet a November 1975 survey by Consumer's Union turned up only four companies offering disability insurance for the homemaker; furthermore, one policy was available only as a rider to a husband's disability plan with the same company. Eight years later, the problem remains: disability insurance is almost universally unavailable to women working in the home even though their services, purchased in today's market, would cost more than \$17,000 to replace.

Lack of equal access to disability insurance is not confined to the homemaker. Women employed as domestic aids or waitresses and women over 65 years old, for example, have greater difficulty obtaining disability insurance than their male counterparts. In addition, part-time employees find that disability plans are unavailable to cover their insurance needs, while full-time workers are well protected. This problem has a more burdensome impact on female employees who generally bear the dual responsibilities of home and career. In 1979, 28 percent of all working women were employed in part-time positions, whereas, only 9.6 percent of all working men were part-time employees.

PENSIONS

Pension benefits, another vital means of securing income protection, are often unavailable to female customers. According to a study by the President's Commission on Pension Policy, "Women are less likely to participate in a pension plan . . . than men." The Commission reports that the worker who belongs to a union and works for a company that employs 500 or more persons has a much higher probability of being a participant in a plan than other workers. Unfortunately, only 15.7 percent of all employed women are union members, compared with 29.6 percent of all men. Also, women are disproportionately concentrated in small industries—such as retail trade and personal services—where pension coverage is less likely to be available as a fringe benefit. In addition, vesting requirements, which presume on-the-job continuity, cut against female workers who adjust their work patterns to meet changing family responsibilities.

In purchasing pension benefits, women face the most explicit form of discrimination. On the grounds that women as a group live longer than men, pension companies compute rates and benefits almost exclusively on the basis of sex. Under defined contribution plans, sex-based tables are often used to compute the amount of monthly annuity. Even though a man and a woman are the same age and have the same amount of money in their pension accounts, the woman will receive a smaller monthly annuity because, theoretically, her total amount will have to be spread over a longer period of time. Thus penalized for their longevity, all women receive

lesser monthly retirement benefits than men regardless of their individual life expectancies.

In recent court decisions, such generalizations have been persuasively challenged, in terms of both statistical and legal merit: a 1978 Supreme Court decision, citing Title VII, squarely rejected differential treatment under employer-operated pension plans. Private insurers offering other policies, however, remain outside the scope of the decision and can freely rely on classifications based on sex. Thus, a double standard of equality now exists in the case of discrimination in pensions. The enactment of S. 372, the Fair Insurance Practices Act will finally correct this dual system by extending Title VII to private insurers.

Not surprisingly, the President's Commission concludes that "women workers do not fare as well as men in the nation's pension programs." Today, when one of every seven Americans over the age of 65 lives in poverty and 72 percent are unmarried women, industry assurances are not enough to guarantee equal access for all.

HEALTH INSURANCE

In purchasing health insurance, women, like most customers, seek protection against the high cost of medical care. Unlike most customers, however, insurance coverage is unavailable or inadequate for one of our most basic medical needs: motherhood.

Over half of the new health policies exclude maternity altogether; the minority of plans that do provide coverage meet less than half the actual costs, and the maternity insurance rates applied by many companies are both obsolete and blind to inflation. As a result of discriminatory practices, women find themselves bearing the full cost of reproduction for society—curious treatment by an industry whose primary function is to spread costs fairly.

AUTOMOBILE INSURANCE

When we talk about sex-discrimination in insurance the first reaction one receives is: "Why would women complain? Don't they pay lower rates than men? Won't insurance rates go up significantly with the passage of this bill?" In fact, only young, unmarried women under the age of 25 pay lower rates than men. The aging process actually increases women's insurance rates. In fact, both men and women drivers now pay rates which often do not reflect their individual driving records, but rather reflect the inaccuracies of broad statistical groupings compiled by sex instead of by mileage driven.

The truth is that gender based tables for automobile insurance have historically been based on stereotypes rather than on fact. One need only look at the origins of the early classifications plans in different states to recognize the preconceived stereotypes that young drivers, in particular young males had a higher number of accidents than other groups of drivers. In order to allow others to enjoy lower insurance rates, all males under age 25 were listed as a separate class for the sake of insurance. At the time it was thought that females did not drive as much. These categories as are the present ones were largely established by guesswork. Sex is utilized as a proxy or indirect measure of other more direct variables such as mileage and maturity.

It now appears that when studies are adjusted for mileage, the common assertion that male drivers have more accidents than female drivers does not stand. A study prepared by the Alliance of American Insurers, a trade organization, purportedly showed that male drivers had more accidents and that those accidents were more expensive than those involving females. This study showed males under age 25 to have an average loss of \$307.46 per car compared to an average per car loss of \$193.92 for females under age 25. However, when mileage differences are accounted for, females had many more accidents per rule and were 50 percent more expensive to insure on a per mile basis.

A California study further reaffirmed the importance of mileage figures when it proved that on a mileage adjusted basis, in most age groups, females had more accidents than males. Thus, the difference between males and females that exists on a per vehicle mile basis is a function of the decreasing rate of accidents per additional mile as total driver mileage increases. Accident propensity difference between males and females is less than 5 percent when adjusted for accident propensity by annual driver mileage.

When factors other than sex are taken into account, it appears that the driver's sex has little or no impact on driving performance. With relatively simple adjust-

ments for mileage and age the accident differential between males and females has been reduced to less than 5 percent.

We must conclude that mileage alone is able to explain more of the variation in accident data than is sex. However, sex and marital status classification are responsible for today's large price differences.

What is at stake today on asking for passage of S. 372 is a question of fairness. Both from a civil rights perspective and from an actuarial perspective, fairness requires that insureds grouped into classes reflect essential differences in their expected losses and expected risk. It is evident that mileage is a better indicator than gender for risk in auto insurance. Yet insurance companies insist on using sex based classification to insure motorists. The result is that the consumer is being hurt. By failing to properly clarify drivers, some persons are being charged substantially more than is statistically justified by their risk or loss.

For states, Michigan and Massachusetts, North Carolina and Hawaii have already eliminated gender based tables for auto insurance classification. These states have taken a first step in eliminating the statistical morass for auto insurance. Insurers are also moving to unisex auto ratings although we believe that only with the mandate from this Congress will a national unisex rating system end the guilt by association that gender based rating systems now implies. Even the GAO, in a 1979 study, questioned sex based classification systems in auto insurance but also noted that "most State insurance departments have unquestionably accepted pricing systems that are convenient for insurance companies rather than effectively protecting the legal rights of their citizens." Today young males are guilty until the aging process proves them innocent.

Marital status is yet another curious factor of actuarial ledgerdmain in the area of auto insurance. When a young male, under 25, applies for auto insurance as a married individual, his wife's driving record is not even considered (the disappearing spouse syndrome), but his rate is substantially lower than if he applied as a single person. This is one case where early marriage actually pays.

Auto insurance is where the greatest myths exist for gender based rate tables. In various studies done by consumer groups and state governments, the conclusions reached by this research is that sex alone is a very poor determinant of risk. Moreover, the use of sex based auto insurance classification schemes are more the product of conventional wisdom than statistical reality. In a New Jersey study of September 1982, the conclusion stated:

"Sex in contrast to industry claims has very little explanatory power and does not create homogeneous groups. Sex is not an accurate predictor of accident risk. Sex is able to explain less than 5 percent of the total variation in risk and yet is responsible for rate differentials of many times greater magnitude. This results in large overcharges to many of the state's drivers. It can be concluded that use of sex as a factor violates the principle of actuarial fairness and should not be used. Gender based grouping does not reflect essential differences and results in large subsidies. Sex is not an accurate prediction of driving performance".¹

A TIME FOR A CHANGE

To sanction the inequities of current insurance practices is to relegate women to inferior economic and legal status. For you as policy makers to overlook the changing demographics in the home and on the job is to perpetuate the myth of the dependent female. For you to continue to allow the exclusion of women from a growing industry is, quite frankly, to ignore good business sense. The Labor Department now estimates that by 1990, 95 percent of America's women will be in the paid labor market. Surely our insurance companies are aware of the great potential that offers them.

To date, piecemeal efforts have been made to eliminate discrimination in pension and insurance practices. Model regulations, proposed by the National Association of Insurance Commissioners, have been adopted in whole or in part by several states. Unfortunately, these band-aid solutions have done little to alleviate what remains a glaring gap in our record of civil rights achievements.

In considering passage of the proposed Fair Insurance Practices Act, this distinguished Committee is showing leadership and foresight. This bill forms no new agency; it promulgates no new rule. It requires no federal monies. Rather, it incorporates and adapts a piece of our Constitutional wisdom that says each individual deserves fair and equal treatment. Women—working, mothering, saving, and invest-

¹ State of New Jersey, Commission on Sex Discrimination in the Statutes, "Sex Discrimination in Automobile Insurance: An Analysis of the Data", September 1982, page 6.

ing—have a right and a responsibility to secure their financial futures through the purchase of pensions and insurance, fairly and equitably offered.

The CHAIRMAN. Doctor, thank you.

I have never understood why certain organizations will fight something so hard without questioning their priorities, whether it is worth it. I have often thought about this with the automobile insurance industry. If worst came to worst and we changed the law, all of them can accommodate it relatively quickly. They may not like it, but in terms of accommodation or cost to them it is relatively slight.

You could argue whether or not women are going to be discriminated against and pay more or pay less, but they can accommodate, whereas the life insurance companies and the pensions, where they have got years of contracts outstanding and have now collected premiums to pay the benefits, they say they are going to have a problem if we top out.

I would like each of you to address yourself to that problem, not the automobile insurance, but is there going to be an added cost in your judgment? Believe me, I know the quality of the people you have got doing research on this issue. You are often criticized, oh well, this is a bunch of activist women who have no depth of research. I have seen your research. It is very, very good.

So, I want you to address yourselves to the questions as far as the pensions and the life insurance part. Will there be a cost if we top out? If so, how should it be picked up?

We might as well start with Ms. Brosseau.

Ms. BROSSAU. I would really like to defer to Dr. Gray, who is a statistician. We all have our research staffs, but I think we should defer to Dr. Gray.

Dr. GRAY. Well, I did speak to this briefly in my statement. The large cost that is involved in pensions has to do with employment-based pensions. As I said, that is covered under title VII.

There may be costs involved in equalization because employers have not yet complied, but the costs will be very minimal with respect to the total amount of money that is involved in employee pension plans.

The CHAIRMAN. Mary, you agree with Dr. Connerton when you said the bulk of these costs are indeed going to be employer costs rather than insurance costs?

Dr. GRAY. That is correct. And what is even more to the point is that in plans like TIAA-CREF, which as mentioned is the subject of current litigation, TIAA-CREF is paying to its immediate annuitants a great deal more than they were guaranteed. So equalizing benefits in the case of TIAA-like plans would cost absolutely nothing, because they are already paying more than their guarantees. It is a question of redistributing existing funds.

The CHAIRMAN. Is this because of an extraordinary investment? They have a greater return than they thought and their contractual obligation was that they would pay out as much as they earned. Why are they paying more?

Dr. GRAY. When they calculated the benefits they computed this at an extremely low rate of interest, like 3 percent, which was not very realistic many years ago and certainly is not very realistic in recent years. They do have more money available.

So, instead of paying still more money to men, they could use some of that money to equalize, and that is a redistribution. So it is not employer money, it is not more money for the insurance companies.

Stock insurance companies have a more difficult problem, and in fact stock insurance companies have plans that are not employment-related, that is to say plans that are not covered under title VII and only would become subject to nondiscrimination provisions on S. 372, and might have some problems in making the adjustments. But that is a very small amount of the total of pension plans that is covered. We do not have any really reliable figures on how much that is.

The Labor Department plan study covers only employment-related plans. The information we have from insurance companies, which is very fragmentary, indicates that other plans are an extremely small percentage of the money that is involved.

I noticed recent ads that have been running in the Washington Post from the American Council on Life Insurance. One of the recent ads said that they were investing \$29 billion, \$29 billion, in the economy this past year, to add to the \$500 billion they already had invested.

When you are talking about \$29 billion, the amount of money that is going to be involved in this is really extremely small.

The CHAIRMAN. You touched upon a sensitive point. I have had difficulty getting an answer to the same question when I actually pose it to individual companies: How much will this cost your company? What are your assets, how much are you paying out, how much more will you have to pay out? I have not yet gotten the answer.

I have this aggregate amount that everybody is going to have to pay out, but I have not yet gotten an answer.

Dr. GRAY. I think that is because the amount involved is very small. With respect to employer plans there may be more money involved. I think the employers are greatly overestimating it.

I was delighted to see also in the New York Times that the city of New York now has a \$150 million to \$300 million surplus for this year. So whatever they were worried about in previous hearings, it disappeared as a matter of concern.

The CHAIRMAN. Did you get that, Ed?

Mayor KOCH. Equal time.

Ms. GOLDSMITH. Senator, I can also briefly address this question. Whatever the projected costs are, we also have to realize that those costs actually are being paid now at the present time and they are being paid by women, because women are being short-changed because of the sex discrimination in the pensions and annuities system.

If it is unfair for insurance companies to have to assume some of that cost, if it is unfair for governments or taxpayers, if it is unfair for employers, it is extremely difficult to understand why it would be fair for women to continue to bear that cost, given particularly that women start from a disadvantaged economic basis in the first place.

Further, as I indicated in my testimony, there is presently \$300 billion in unfunded liabilities in the pensions and annuities pro-

grams nationwide, and what we are talking about is adding 1 percent to that \$300 billion figure—certainly a small price to pay for equalizing pensions.

The CHAIRMAN. Frank.

Senator LAUTENBERG. You may continue, Mr. Chairman.

The CHAIRMAN. Dr. Mendelson, let me ask you one further question on auto insurance for women under 25. I will paraphrase it, but this is roughly it: Just wait until the girls find out that they are going to have to pay a lot more for insurance. Your organizations really do not represent the average woman in this country, or else you are out of touch with them.

I would like you each to address yourself to that. Here is a rather extraordinary cross section of women's organizations. Yet the argument is going to be made that either you are out of touch with your members or your members collectively are not anywhere close to a rational cross section of other women.

Do you want to start, Ms. Brosseau?

Ms. BROSSAU. I think the most recent testimony indicates that if mileage were used in figuring the auto rates that women would not be paying a higher rate.

Our organization also takes the position that there are often costs involved in obtaining civil rights. We looked at this bill as a civil rights issue. We feel that in other areas of this country, in housing and in credit, the individual has come to take the most important position, and we feel the insurance industry is really the last bastion that is holding out in providing equitable treatment of women and men in this country.

The CHAIRMAN. Ms. Goldsmith.

Ms. GOLDSMITH. NOW has a quarter of a million members nationwide. I think we are rather comprehensively representative. I do not think we are out of touch.

The alleged discount that young women get in driving lasts only for a very short time. It is also—the differential is not based on statistically verifiable evidence, as indicated when we challenged the sex-based auto rates in Pennsylvania and won.

We are, incidentally, opposed to sex discrimination, whomever it disadvantages. But insofar as the industry does have figures, those figures indicate that actually women's driving records are better throughout their lifetimes, and that therefore the differential in rates cannot be seen as anything more than a discount or a marketing device.

The CHAIRMAN. Dr. Gray.

Dr. GRAY. I would also like to say that, with respect to automobile insurance, were miles driven used instead of sex, women would benefit because older women would be paying less and younger women would be paying the same on the average. But I do not think women realize the discrimination that takes place.

For example, with respect to pensions, many of our members, as I am, are college professors. Even they do not realize that their pensions are discriminatory, because it is not shoved in front of them every day. When they get to be 70 years old and suddenly realize that they are going to be drawing 15 percent a month less every month, even though they have been making the same salary

as men, after a long struggle, then they suddenly start seeing what is going on.

I think that we are very much in touch with people. We are trying to educate them a little bit more as to the extent of the difficulties that are involved. But I do not see this disadvantaging women in any way.

In automobile insurance we would gain, in pensions we would gain, both as annuitants and as survivors. And even if we did not, as Judy said, we want discrimination ended.

The CHAIRMAN. Dr. Mendelson.

Dr. MENDELSON. I do not think we are out of touch with our membership. We have 190,000 members in every State and U.S. territory, and the support we get when we discuss this issue is overwhelming, because it is a consumer issue as well as a women's issue.

As women enter the work force, as women are in growing numbers single heads of households, the way they spend their scarce resources right now is the most important thing to them, and as they learn that the cost of insurance policies varies and that they have to look out for their pocketbook, they really become concerned, not only with the discriminatory aspects of the nature of insurance as it is sold today in the United States, but also the economic aspects as well.

And as far as this question about pensions, only 33 percent of all women today are covered by pension policies, and the women who are really affected in the long run are women like myself who will retire, according to TIAA-CREF, in the year 2012.

I do not know if I will make it, but I think one of the points being raised is that we do not have that many people right now who are actually affected, although those who will be affected by the bill need that help. We do not want our elderly women to remain in poverty, and the small amount of money we are talking about is minimal.

So I respond to you that way.

The CHAIRMAN. A last question, then I will turn it over to Frank. You heard me ask Mr. Ryan whether or not the administration would extend to pensions and insurance its policies supporting the traditional Civil Rights Act judging people as individuals rather than as a class. There was some equivocation in his answer, I thought, but that is neither here nor there.

Let me reverse the question and ask you. In enforcing our Civil Rights Act, should we value people on their merit as an individual and bring our enforcement actions on that basis, or should we bring them as class actions? Ms. Brosseau?

Ms. BROSSAU. I think we have to judge people on an individual basis. But I think we also have to understand that in some cases class actions are necessary to—

Dr. GRAY. Mr. Chairman, I do not think the two are mutually exclusive in any sense. For example, the *Norris* case, which deals with pensions, was brought as a class action case on behalf of all the employees of the State of Arizona who were affected by this discriminatory pension plan. Ms. Norris, being very articulate, has gotten a lot of attention and she is the named plaintiff, but it is a class action.

It is to protect the individual rights of each member of the class that the suit has been brought.

The CHAIRMAN. But in the *Norris* case did you not have a situation where every member of the class was disadvantaged?

Ms. GOLDSMITH. Yes.

The CHAIRMAN. Whereas in a normal civil rights class action the argument is made that if you are going to have any serious enforcement of civil rights, if you try to do it on a case-by-case method and go to court and handle them individually, you are going to be forever righting the past discriminations of this country. So we bring in essence class actions, even though everyone in the class is not proven or even alleged to be discriminated against.

Dr. GRAY. Yes, that is certainly true. For example, in your own State of Oregon the women faculty members in the system of higher education have brought a class action. There are 2,000 members in this class. It would consume an undue amount of their individual resources, as well as the resources of the State of Oregon, to try to bring 2,000 individual cases or even 500 individual cases out of those 2,000.

So what people seek is a general remedy. It is true that each individual person might not be able to show that her salary was depressed because she was a woman, but they are also seeking general remedies such as better review procedures, access to grievance procedures, things like that—lots of class remedies that will affect everyone in the class whether there is this individual dollar amount that you can put on an individual member's damage.

I think that class actions are an extremely important tool, and I would agree that the administration has not been as forthcoming as it might be in enforcing our civil rights legislation, and I would like to see it take some of the burden off of individual plaintiffs. We do not have all that much money.

The CHAIRMAN. Do either of you want to comment? Ms. Goldsmith?

Ms. GOLDSMITH. Just simply that certainly people should be treated as individuals. However, if people are being discriminated against because they are members of a group, that is, because they are women, because they are minorities, then the only appropriate and effective way of redressing that kind of grievance is through class actions.

The CHAIRMAN. Dr. Mendelson, any comment?

Dr. MENDELSON. I would agree.

The CHAIRMAN. I have no further questions.

Frank.

Senator LAUTENBERG. Briefly, Mr. Chairman, the eloquence of the testimony from all of our participants speaks very well to the cause. I support the development of this legislation.

I come with some bias. If I may, just a quick personal statement. My mother was widowed early in life and went to work for a major insurance company, very successfully, during the war. She was told at the end of the war when the men returned that she would have to relinquish the territory, even though she was eminently successful, being third, I think, in an office of 90-some sales people.

She said, well, how about another territory, and they said, we do not employ women in these jobs. So early on we learned in the

Lautenberg household what happens when people who have ability do not have an opportunity.

Nevertheless, real questions have been raised. I think it is fairly well understood that Mayor Koch he is concerned about the topping-up provision—I do not want to speak for you, Ed he has said it creates a problem for his city. Of course, we heard this morning that the abundant surpluses are going to take care of everything.

Is there anything wrong with his theory about establishing some middle ground by either adjusting benefits or adjusting premiums so that his city and my State also can comply without substantial cost?

Dr. GRAY. Well, the particular problem that he is worried about is currently under litigation. I am not familiar with the intimate details of the proposed solutions that have been part of the settlement negotiations or have not or anything else.

I know the city of New York, his employer, has been found liable because of its pension plan and they have had adequate opportunities to remedy it. I think you will also be hearing from the attorneys in the *Women United* case and I think they can probably shed more light on the specific details.

I see no reason why the benefits of the women employees of the city of New York should be lowered. But as I say, I think possibly the attorneys in the case would be more knowledgeable on the precise details. And it is at the moment under litigation.

Senator LAUTENBERG. I am sure we will hear more about this later with the next witness.

In your review, have you found that newer pension plans carry less discriminatory tables than those of older standing?

Dr. GRAY. There has been very little change in pension plans. Some of the large pension plans are sex-neutral, such as the Federal employee retirement plan is sex-neutral. Social security is sex-neutral with respect to the benefits it pays. The plans of many State governments and many cities are sex-neutral, but they have been for some time.

I do know of a recent change in the State of Minnesota. The University of Minnesota previously had a TIAA-CREF discriminatory retirement plan, and the faculty and the administration of the University of Minnesota decided that that was not the right thing to do, to discriminate against its women employees, so they changed from that plan to a private plan with other insurance companies in Minnesota that were able to provide equal benefits.

So some employers are making an effort to switch over and come into conformity with title VII. In the private sector, since there has not been any legislation in effect, of course, there has not been as much action, although some States have moved in auto insurance, and there are many private plans available. For example, I have a life insurance plan through the American Mathematical Society which is sex-neutral. So plans like that are available.

Senator LAUTENBERG. There are a number of States that already have sex-neutral ratings in auto insurance. I assume you are familiar with that. Dr. Mendelson, do you want to comment about the experience that these States have had? Were the dire predictions about on costs fulfilled?

Dr. MENDELSON. I would say you will hear in great detail about this from Mr. Robert Hunter, who will testify later and will talk about the various State experiences.

From what I have seen, including studies done in your own State of New Jersey, which of course at this time does not have a unisex system but is examining that prospect, the exaggerated cost, the hyperbole put out by the insurance companies that people's rates will jump up, is just not holding water in such States as Michigan, North Carolina, Hawaii, that have already instituted this kind of unisex system. But I would really defer to Dr. Hunter, who has done some excellent research, to answer your question.

Dr. GRAY. One more thing should be said, also. Sometimes the removal of the use of sex as a risk classifying factor has been accompanied by other reforms in State insurance law, which has led to an increase in premiums for everyone because of better protection for consumers. So one has to be cautious in looking at the estimates of what unisex has cost to factor out what that has cost as opposed to what other provisions of State insurance law may have cost.

Of course, insurance companies can choose to do things in the worst possible fashion, but if they choose to behave in a rational fashion and use mileage driven instead of using sex, then I don't think these dire consequences will result. I think it is up to the insurance companies and up to the State commissions.

Dr. MENDELSON. Mr. Lautenberg, there is one point. There was a California study done 10 years ago which said that eye color was as good as sex in assessing risk of accidents. So I think that testifies for the mileage.

The CHAIRMAN. Eye color?

Dr. MENDELSON. Eye color was as good as sex.

The CHAIRMAN. Does that have any relevance at all? You are saying sex has no relevance either.

Dr. MENDELSON. Sex has no relevance either.

Senator LAUTENBERG. As a father of three daughters and a son who is not yet old enough to drive, I can say his experience is better than the girls' has been with reference to this.

I want to just comment on one more thing, Mr. Chairman. In response to your question about the costs for insurance should the changes take place, I note that the Prudential Insurance Co. is headquartered in my State. It has put out an estimate that their reserves would be depleted by about \$600 million to \$1.5 billion on its life insurance alone.

I give that to you without editorial comment, but I simply respond to the query which you had put forth earlier about the companies' costs in making this needed adjustment.

Ms. GOLDSMITH. And what is the cost for not doing it?

Senator LAUTENBERG. Judy, you and I are on the same side.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Next we will take the mayor of New York, Ed Koch. Good morning, Mr. Mayor.

STATEMENT OF HON. EDWARD I. KOCH, MAYOR OF NEW YORK CITY, ACCOMPANIED BY DORON GOPSTEIN, DEPUTY CORPORATION COUNSEL; JONATHAN SCHWARTZ, CHIEF ACTUARY; ALAIR TOWNSEND, BUDGET DIRECTOR; AND DENNIS DE LEON

Mayor KOCH. Good morning, Mr. Chairman.

The CHAIRMAN. I will say, while the room is clearing out, I am not sure exactly what the mayor's testimony will be this morning. I know in the past that New York has indicated that they had some problems on topping up:

Ed has been fighting on the side of equal rights for women as long as I have known him. You recall, Ed, you and I met in 1973 or 1974 in Wilbur Mills' office arguing with him about the treatment of heads of households and giving them the then standard deduction. They were the ones who had the lowest average income. They were usually divorced, they usually had children. They got the lowest standard deduction. We were not overwhelmingly successful at that time.

Go right ahead.

Mayor KOCH. Mr. Chairman, with your permission I would like to introduce my colleagues. With me on my right is Doron Gopstein who is deputy corporation counsel. To his right is Jonathan Schwartz, who is our chief actuary. To my left is our budget director, Alair Townsend.

I would like to read a relatively brief statement, which has kind of to do with that, and to summarize my precis.

The CHAIRMAN. Go right ahead.

Mayor KOCH. First of all, Mr. Chairman, the last time when I was a Member of Congress I participated in a meeting, a committee meeting such as this, it was on equal credit for women legislation, of which I was the prime sponsor.

I am here in support of the legislation that you have to strike down discrimination, but I do offer some proposals which will deal with making sure that in accomplishing that goal we do not have windfalls. And I do not think anybody wants a windfall, but the impact of the legislation as currently set forth would in fact provide it, and the strange thing is it would provide it to men, not to women, because in the computation of our costs—and here to address one of the questions that was raised by you, Mr. Chairman—the costs to a company—you indicated that in the many times you have asked that question you could not get a direct response.

And also, Dr. Gray, in responding to that, said it would be very minimal. That was her quote.

I want to tell you what it will cost the city of New York if it were go to through unamended and allowing, as this legislation does, for topping out. The cost to the city of New York would be, over roughly a 16-year period, of \$1 billion, to be exact \$991 million. I will explain why in a few moments.

That is a lot of money for a city to bear. I heard a moment ago, well, why should New York City worry about that, it has a reputed \$150 million to \$300 million surplus. I did not know I would be attacked for that.

The fact is, only the uninitiated would perceive that as a surplus. Before I became mayor I never heard of a GAAP, generally accept-

ed accounting procedure, on the budget. We have a GAAP balanced budget. It means that the dollars we are able to put together over an 18-month period, the balance of fiscal 1983 and fiscal 1984, those moneys that we were able to accumulate under GAAP, we can use in fiscal 1984 to provide essential services.

The \$150 million to \$300 million is not going into a bank account. In addition, you should also know that in fiscal 1985, with all of our surpluses, so-called, we have a \$450 million gap that we will have to deal with in fiscal 1985. But that is the nature of government. I will not burden you with my fiscal problems, but there is no surplus to give away, as Dr. Gray suggested.

Then, in addition to that, you know, in 1975 New York City had 30,552 police officers, uniformed police officers. Today, we can only afford 24,095. That means we have 6,500 police officers to go before we are back to where we were in 1975.

That is a brief precis on New York City's fiscal situation, prior to the fact that we are in a fully balanced state and have been for 3 consecutive years and will be forever.

And then finally, before I read my formal precis, I would ask your indulgence if I could be excused at 11:35, if you will permit me, so as to get back, and my colleagues, if you want to pursue questions, those that you wanted could stay and respond, with your permission.

I am appearing before this committee to endorse the goal of sexual equality as stated in the Fair Insurance Practices Act and to register New York City's strong objection to that provision of the act which reaches this goal by the windfall device of simply increasing everyone's retirement benefits.

The act represents a public consensus that women and men are to be treated as individuals rather than as members of actuarial groupings. This is an issue of great social import to all responsive public officials concerned about women's rights. As responsible leaders, however, we must be concerned about the means used to achieve this end.

Section 4(c)(2) of the act would require a pension program to increase benefits to the level of the advantaged sex. Topping off, however, because of its enormous financial costs would be both seriously harmful to New York's efforts to maintain a reasonable level of basic services and is completely unnecessary to achieving the goal of equality.

First, the office of the chief actuary of the city of New York, who would be Jonathan Schwartz, estimates that to comply with the topping off provision of the act would result in an increased liability for the city's pension systems of \$862 million. This amount must be spread out over the future working lifetime of the retirement system members, with a resulting cost to the city of nearly \$1 billion; \$991 million is the actual amount.

Second, the solution proposed in the act is completely unnecessary to ending the discrimination the bill is intended to remedy. Equality in pension benefits can be reached through other adjustments in benefit levels. We believe that the equalization of benefits and contributions to a midpoint level between the—which I believe is what New Jersey is going to or already has gone to—a midpoint

level between the rates currently paid to men and women would be both equitable and fiscally responsible.

Section 4(c)(2) of the act should be amended to specifically permit public retirement systems to equalize retirement benefits through the adoption of a weighted midpoint, rather than requiring the topping off windfall. To require that the future retirement benefits of all active members of our retirement systems be raised to the level of the advantaged sex would be to extend the benefit of what has been found by the courts to be an illegal contract.

This unnecessary provision of the bill is disturbing for another reason. At a time when Congress is working so hard to preserve the future actuarial and financial soundness of the Federal social security system, it is inconceivable that it would weaken State and local retirement systems by imposing unnecessarily billions of dollars of new liabilities on them.

The nationwide impact of the topping off solution on private and public retirement systems has been estimated by the Department of Labor to be upward of \$1.7 billion a year. As Clarence Thomas, Chairman of the EEOC, pointed out in his February 24, 1983, testimony on H.R. 100, the Nondiscrimination in Insurance Act, the comparable House side of this legislation, he said: "The various approaches to equalization and their cost implications should be carefully considered before a single approach is legislated."

Let me first discuss the \$1 billion cost of S. 372 to New York City and what this will mean.

When Federal courts have had to devise remedies for cases of sex discrimination in pension programs, the solutions have always reflected a concern for the financial impact of any solution on the reserves of the retirement system and the funding political entity. The courts have realized that they cannot ignore the costs which changes in the rules affecting insurance and pension plans may have on the economy.

Just as most courts have relied on the Supreme Court's holding and the analysis in *Los Angeles Department of Water and Power v. Manhart* as the basis for finding liability against pension systems, so must the courts look to the Supreme Court's equally broad and pointed language cautioning lower courts about the special care required in fashioning appropriate relief.

New York City's five pension systems have a total of about \$14 billion in assets. Our retirement plans have 294,000 active members, and provide for 132,000 retirees. We want to state up front our position is going to midpoint will not adversely affect the position of the retirees. It will not reduce their benefits to accomplish that. We are talking about prospectively.

If these systems incur an increased liability, the city is not generally permitted to raise contribution rates or lower benefit levels. The staggering increase in liability imposed by the act would most probably be paid out of our budget. One billion dollars over the future working lifetime of our retirement system members means that the city will have to pay \$82 million for each of the next 10 years, \$31 million for the 11th year, and \$28 million for each of the subsequent 5 years.

What does this mean in the context of the city's current budgetary picture? We cannot always accurately anticipate the levels of

State and Federal aid, even as our budget deadline draws near. Still, the city's financial plan for fiscal years 1983-87 does assist us in understanding what such sums may mean to our efforts to balance our budget, which by law we are required to do.

For example, because of fiscal stringencies in 1983, we were not able to hire 1,000 additional police officers previously budgeted. In this area alone, therefore, we had to reduce our previously planned expenditures by \$26 million in fiscal years 1982-83, and growing to a full year value of over \$38 million in fiscal year 1983-84.

Police protection is obviously a very high priority in New York City and elsewhere in this country, but continuing fiscal restraints have required the city to lower its uniform police strength from 30,552 in 1975 to 24,095 in 1983.

Another high priority service is education, an area in which the city has faced rapidly rising special education costs. Despite our desire to improve the quality of education in New York City—

The CHAIRMAN. Go ahead and finish up.

Mr. KOCH. It will be necessary in 1984, as in the past, to seek substantial cuts. For example, our most recently approved financial plan calls for a \$168 million reduction program eliminating the positions of 5,600 educational personnel. While it is our hope that increased State aid to education will allow us to reduce somewhat the size of these dollar and personnel reductions, the city's board of education will be required to bear its fair share of budget restraints.

It is always hard to translate such real liabilities into precise numbers of teachers, police, or firefighters who will be laid off or not hired to fill attrition. However, as an indicator of how much a dollar will buy in services, you should know that each \$1 million is the equivalent of 41 teachers or 30 police officers. Given how few discretionary items there are in the city's budget, the \$1 billion cost of S. 372 will undoubtedly result in further police, fire, educational, and sanitation reductions.

There have been some unsubstantiated suggestions by opponents in litigation that our figure of approximately \$862 million in additional liabilities is not accurate. Our cost estimates have been reviewed carefully by the chief actuary for the city of New York and by independent outside sources. We reiterate to this committee that the added liabilities will be in this range, if not more.

I want to tell you what they depend on so you will know. They say that in a prior case, we said our cost would be \$400 million. It is true, \$400 million just to bring the women up to the benefits provided for the men. But they did not estimate at that time what the cost will be to bring the men up to where the women are in other areas, the so-called topping off, and that total figure comes out to \$991 million over that span of time.

As to how this \$862 million will be paid, there have been comments suggesting that the impact can be somehow lessened through various funding or cost allocation techniques. First, it has been suggested that we could make up the \$862 million liability through member contributions. To do this, however, we would have to increase these contributions by an average of about 35 percent a year. Even assuming that we were able to pass these substantial costs on to the employees, any increase in contributions may well

be borne by the city as municipal unions will undoubtedly seek to increase the salaries or other benefits to offset this 35 percent increase in employees' costs.

Second, some have suggested that we amortize the increased cost over 30 or 40 years. State legislation, however, requires the city to amortize unfunded pension liabilities over the future working lifetime of the retirement system members. This time period ranges between 10 and 16 years for the different retirement systems. This New York State legislation quite correctly requires the city to end the practices of the not so distant past of mortgaging our unfunded liabilities for 40 years or more as a way of ignoring the real fiscal costs. We came out of that mire when we were spending money that we did not have and mortgaging the future. Do not push us back into that morass.

One of the reasons I am testifying today is to sound an alarm as to the costs of S. 372 to New York City's pension systems and other governmental pension systems. The other reason, however, is to share with the committee some of the expertise which we have gained over the past year in attempting to resolve problems of alleged sex discrimination in retirement contributions and practices.

As the committee may be aware, in 1981 the New York City employees' retirement system was found to have violated title VII by using sex-based mortality tables in determining women's contributions and benefit levels. The case is *Women in City Government United v. the City of New York*. We are currently involved in the remedy stage of the case. The court in that case is attempting to devise a solution that will provide equally and yet not impose the financial hardship that the Supreme Court in *Manhart* so clearly disallowed.

We have suggested two approaches. First, a weighted midpoint solution. We think that is the fairest. It would treat our entire work force as one group, and would resolve the inequality by moving to some new contribution and benefit level between that currently received by men and women. This would mean raising and lowering men and women to some new level that would reflect the actuarial experience of the entire retirement system.

For example, assume that Helen G. and John G. are twins, and that both have worked for the same number of years in the same job at the same salary. If they both chose the maximum retirement allowance at retirement, Helen would earn \$2,852 and John \$2,878. If we were to go to a weighted midpoint solution, both would earn \$2,870, with Helen gaining \$18 and John losing \$8. Such a solution was recently approved by the Second Circuit Court of Appeals in *Spirit v. TIAA-CREF*, and by the U.S. District Court for the Central District of California in *Shaw v. the International Machinists Union*. That is, the weighted midpoint would not increase the obligations of the system with regard to its active members, while equalizing all benefit and contribution levels, and might cost up to \$107 million, depending on how, if at all, it was to be applied to current retirees.

A second possible remedy would be to treat women like men for benefits and contribution. The second solution would mean that women would be raised to the level of men, where men are eligible for higher benefits and potentially lower, where men would receive

less than women. The cost of such a change would be significant, but below the costs of increasing benefits across the board. The cost of this could be as high as \$113 million, depending on how, if at all, it was to be applied to retirees.

The female members of our retirement system would, of course, gain more under S. 372 than they could under either of the two proposals that we have set forth.

Incidentally, of the \$862 million windfall in New York City alone, nearly three-fourths, or \$629 million, would be paid to men topping off to higher female benefit levels. However, the purpose of this legislation is not to create a windfall either for men or for women. The purpose is to create equality in contributions and in benefits. Why should a remedy be adopted which unnecessarily harms large public retirement systems like those of New York City when there are equitable and less costly alternatives available.

And so, in conclusion, I urge that section 4(c)(2) of S. 372 be amended to specifically permit the equalization of retirement benefits through the adoption of a weighted midpoint. Moving benefit and contribution levels to an average level will achieve the desired goal, your and my desired goal of equality while not necessarily increasing our liabilities. This is the responsible solution to an important social issue.

New York City, as are all localities, is in a period of intense pressure on its resources. The pressure that is brought to bear can only worsen if we do not make prudent choices in public policy.

Thank you.

The CHAIRMAN. Ed, I have two quick questions before you have to run, but incidentally, let me say to Ms. Townsend, I thought you were very effective that night we appeared on McNeil Lehrer. She was in New York and I was here. I have been up against some tough people, but you were excellent.

Ms. TOWNSEND. Thank you.

The CHAIRMAN. Ed, you have a State constitution that prohibits reduction in benefit levels, do you not?

Mr. KOCH. We do. Yes, sir.

The CHAIRMAN. The weighted midpoint would not impair or violate that constitutional provision?

Mr. KOCH. We do not believe that it would, Mr. Chairman, because we believe that there are two responses to making the change there. One is, the constitution should not, would not require that a contract which was wrong to begin with and violative of equality should be enforced in the future. That would be one. That is to say—

The CHAIRMAN. Wait a minute. I know that. Your argument is going to be that the contract was illegal all along.

Mr. KOCH. That is what we are saying. What we are saying is that the benefits given should not have been differentiated at their inception.

The CHAIRMAN. Do me a favor. Let me ask your legal counselor, do you have a memo on this or something I could have. This argument has been raised generally about impairment of contracts, and if you have a memo that supports that conclusion, I would love to have it.

Mr. KOCH. Yes, we will.

Mr. SCHWARTZ. Yes, we do have that.

Mr. KOCH. The other argument is, the Federal courts have in the past, where a constitutional provision was found to be inequitable, overruled the State of New York's constitution is subject to a Federal law and does not surpass Federal law.

The CHAIRMAN. In a nutshell, if you could get a satisfactory weighted midpoint solution without lowering the benefits of those who are retired, you would support this bill?

Mr. KOCH. Yes.

The CHAIRMAN. You also have an alternative problem. Let us say we do not pass any bill, and if you lose the court suit, you are kind of up a creek without a paddle financially, are you not?

Mr. KOCH. No. What we will do, and we have been trying very hard to fashion with the plaintiffs, who at this moment are not disposed to concur in a settlement of the matter, and who are, as I understand it, intent to await the judge's ultimate disposition, if we can fashion with them or ultimately have the court fashion with us and impose a midpoint solution, that is the way we would like to go. We want to bring equality here. We do not want people to have windfalls at the expense of the public, and that is exactly what will happen.

When I sit here and I hear someone say, as I did, you get a little upset—we want not only everything that the men have, and they are entitled to it, we also want the extra that we already have, that is not fair.

The CHAIRMAN. Ed, I am really sorry to see that you have lost your fire since you left Congress.

I have a couple of more questions but they relate to your staff. You may have to run.

Frank, do you have any questions you want to ask of the mayor?

Senator LAUTENBERG. The mayor and I know each other from a different world. I used to be a port authority commissioner, at which point I was sitting there and he was sitting here. We are not going to take this opportunity of the tables being turned to get even, I promise you.

Mr. KOCH. I always treated you very well, Senator.

Senator LAUTENBERG. But rarely in agreement.

Mayor, you used the word "windfall." Can you give me a quick definition of what you mean by windfall? Are you talking simply about the increased benefits?

Mr. KOCH. The windfall to me is this. If the concept is equality, and if the legislation gives more than equality, if at the end of the road you are not receiving more by simply going to what the men are getting now, which is unequal, and men are getting more, but you come out at the end with a situation where you do not give up what you have that is extra and cause us then to move the men up—

Senator LAUTENBERG. I understand.

Mr. KOCH. That to me is a windfall as I define it.

Senator LAUTENBERG. Windfall has a broader connotation. I think it refers to a bonanza.

Mr. KOCH. More than equality, which is what they are seeking.

Senator LAUTENBERG. You say that you would accept this with a weighted midpoint that would not apply to existing retirees.

Mr. KOCH. The midpoint would apply to those who are currently in the work force, which would not impose on the retirees.

Senator LAUTENBERG. You and I cannot use the terminology mid-course correction. That is not for Democrats.

Thank you, Mr. Chairman.

The CHAIRMAN. Ed, thank you very much for taking the time. We appreciate it. Let me ask whichever of your staff knows, have you had a chance to look at the Department of Labor's cost impact on this study, and how does it compare with your study in terms of costs? Take that microphone, so the people can hear you back there.

Mr. GOPSTEIN. I did have a chance to read the Department of Labor study going back on the plane yesterday. Their methodology is similar to ours, but not identical to ours. I guess one key difference is this. They use the same kind of concept of a weighted midpoint that we do, but they develop it differently. The difference is as follows. The universe that they analyze in very round numbers is about 7 percent male and 30 percent female. But a particular option is selected by about 30 percent of males and about 10 percent of females.

So, in other words, you have 30 percent of 70 percent, or 20 percent of the universe taking the option among males, and 10 percent of 30 percent or about 3 percent taking it among females.

Senator LAUTENBERG. What are the options you are selecting?

Mr. GOPSTEIN. They are talking about 30 percent joint survivor protection. That is what they are talking about. Therefore, in the universe, men outnumber women by 20.5 to 1, 7.5 to 3. In the universe for options men outnumber women something like 6 to 1 or 7 to 1, 20 to 3. Consequently, in determining the weightings, you first develop this weighted midpoint using the 20 to 1.5 midpoint, the 70 to 30 midpoint, and then apply it as an option. Where men outnumber the women 6 to 1 or 7 to 1, you do generate an additional cost.

Whereas if you do it the way we did it—later MFOA will be testifying. They recommend similar methodology. If you weight the midpoint based on the number of people selecting the option as opposed to the number of people in the universe, then you can indeed structure something which is cost free or very nearly cost free, but because of the fact that the Labor Department did not structure their weighting that way, even their midpoint solution does give rise to additional cost.

The CHAIRMAN. I think I followed that.

Mr. GOPSTEIN. The Department of Labor study figured out their cost while looking at the wrong numbers of people in the overall retirement system. We have calculated our costs by looking at what groups utilized which options, by the actual utilization rates. When you use the actual utilization rates, that is how we figured that our weighted midpoint would result in a zero cost.

The CHAIRMAN. But the mayor said you would be willing to accept a weighted midpoint that even had some cost, as I understood it.

Mr. GOPSTEIN. For retirees.

The CHAIRMAN. There is a limit beyond which you cannot go, but there is a limit you can accept.

Mr. GOPSTEIN. Yes.

The CHAIRMAN. Let us make sure we understand this term, "weighted midpoint." On the average women are getting \$900, men are getting \$1,000. You are trying to come in for future retirees, not changing the rules on present retirees. You are trying to come in with a figure some place between \$900 and \$1,000 where men and women will get the same, and adjust your premiums for that accordingly. Do I phrase it roughly right?

Mr. SCHWARTZ. The contributions will be adjusted and benefits will be adjusted. The number, of course, would not be in the middle exactly. It would be weighted.

The CHAIRMAN. It would clearly be weighted by, one, the number of people you have in the system at the moment. Then, henceforth it would make no difference. It will affect men and women initially, would it not?

Mr. GOPSTEIN. Your hypothetical numbers dovetail beautifully with the hypothetical example which I cooked up which I think illustrates Senator Lautenberg's question about windfalls beautifully. I cooked up a hypothetical case where right now we would be paying a man \$880, a woman \$900, and with the topping off provisions we would pay \$990. This is what we are trying to avoid.

The CHAIRMAN. That is not what you would call a midpoint correction.

Frank, go ahead.

Senator LAUTENBERG. I am befuddled and bedazzled. I studied statistics as a minor subject, and I enjoyed leaving it.

We will have to take some time other than this to go through that permutation you have just delivered, to go from an average of \$880 to \$900 and come up with \$990.

Mr. GOPSTEIN. But the one it relates to, when a woman's conversion factor, her annuity factor is 0.8—a woman's is 0.9 and a man, say, is 0.8. If you top off, you move the conversion factor to 0.9 for both. If you have already raised the maximum retirement allowance, you end up when you multiply those figures at a higher option level than either party had before.

Senator LAUTENBERG. I guess I will have to take your word for it. I was curious. The option, did you say, was a joint survivor's option?

Mr. GOPSTEIN. In the Labor Department study, it was the 100-percent joint survivor option.

Senator LAUTENBERG. With the joint survivor option, is there no minimum certain period?

Mr. GOPSTEIN. That is correct. For example, if both parties get killed in a plane crash, that is it. No more payments. But on the other hand, it is paid for as long as either of the retiree or the spouse is alive.

Senator LAUTENBERG. Right. It is a substantially reduced benefit when you take that kind of option, is it not?

Mr. GOPSTEIN. Yes.

Senator LAUTENBERG. OK. I have nothing else, Mr. Chairman.

[The statement follows:]

STATEMENT OF HON. EDWARD I. KOCH, MAYOR, CITY OF NEW YORK

I. INTRODUCTION

I am appearing before this Committee to endorse the goal of sexual equality as stated in the Fair Insurance Practices Act ("Act") and to register New York City's strong objection to that provision of the Act which reaches this goal by the windfall device of simply increasing everyone's retirement benefits.

The Act represents a public consensus that women and men are to be treated as individuals rather than as members of actuarial groupings. This is an issue of great social importance to all responsive public officials concerned about women's rights. As responsible leaders, however, we must be concerned about the means used to achieve this end.

Section 4(c)(2) of the Act would require a pension program to increase benefits to the level of the advantaged sex. "Topping off", however, because of its enormous financial cost would be both seriously harmful to New York's efforts to maintain a reasonable level of basic services and is completely unnecessary to achieving the goal of equality. First, the Office of the Chief Actuary of the City of New York estimates that to comply with the "topping off" provision of the Act would result in an increased liability for the City's pension systems of \$862 million. This amount must be spread out over the future working lifetime of the retirement system members, with a resulting cost to the City of nearly \$1 billion. Second, the solution proposed in the Act is completely unnecessary to ending the discrimination the bill is intended to remedy. Equality in pension benefits can be reached through other adjustments in benefit levels. We believe that the equalization of benefits and contributions to a midpoint level between the rates currently paid to men and women would be both equitable and fiscally responsible. Section 4(c)(2) of the Act should be amended to specifically permit public retirement systems to equalize retirement benefits through the adoption of a weighted midpoint rather than requiring the "topping off" windfall. To require that the future retirement benefits of all active members of our retirement systems be raised to the level of the advantaged sex would be to extend the benefit of what has been found by the courts to be an illegal contract.

This unnecessary provision of the bill is disturbing for another reason. At a time when Congress is working so hard to preserve the future actuarial and financial soundness of the federal social security system, it is inconceivable that it would weaken state and local retirement systems by imposing unnecessary billions of dollars of new liabilities on them. The nationwide impact of the topping off solution on private and public retirement systems have been estimated by the Department of Labor to be upwards of \$1.7 billion a year. As Clarence Thomas, Chairman of the EEOC, pointed out in his February 24, 1983, testimony on H.R. 100, The Nondiscrimination in Insurance Act, "The various approaches to equalization and their cost implications should be carefully considered before a single approach is legislated."

II. COSTS

Let me first discuss the \$1 billion cost of S. 372 to New York City and what this will mean.

When federal courts have had to devise remedies for cases of sex discrimination in pension programs, the solutions have always reflected a concern for the financial impact of any solution on the reserves of the retirement system and the funding political entity. The courts have realized that they cannot ignore the cost which changes in the rules affecting insurance and pension plans may have on the economy. Just as most courts have relied on the Supreme Court's holding and the analysis in *Los Angeles Department of Water and Power v. Manhart*, 435 U.S. 702 (1978), as the basis for finding liability against pension systems, so must the courts look to the Supreme Court's equally broad and pointed language cautioning lower courts about the special care required in fashioning appropriate relief.

New York City's five pension systems have a total of about \$14 billion in assets. Our retirement plans have 294,000 active members and provide for 132,000 retirees. If these systems incur an increased liability, the City is generally not permitted to raise contribution rates or lower benefit levels. The staggering increase in liability imposed by the Act would most probably be paid out of our budget.

One billion dollars over the future working lifetime of our retirement system members means that the City will have to pay \$82 million for each of the next ten years, \$31 million for the eleventh year, and \$28 million for each of the subsequent five years. What does this mean in the context of the City's current budgetary pic-

ture? We cannot always accurately anticipate the levels of state and federal aid even as our budget deadline draws near. Still, the City's Financial Plan for Fiscal Years 1983-87 does assist us in understanding what such sums may mean to our efforts to balance our budget, which by law we are required to do. For example, because of fiscal stringencies in 1983, we were not able to hire 1,000 additional police officers previously budgeted. In this area alone, therefore, we had to reduce our previously planned expenditures by \$26 million in Fiscal Year 1982-1983, and growing to a full year value of over \$38 million in Fiscal Year 1983-1984. Police protection is obviously a very high priority in New York City, but continuing fiscal restraints have required the City to lower its uniform police strength from 30,552 in 1975 to 24,095 in 1983. Another high priority service is education, an area in which the City has faced rapidly rising special education costs. Despite our desire to improve the quality of education in New York City, it will be necessary in 1984, as in the past, to seek substantial cuts. For example, our most recently approved financial plan calls for a \$168 million reduction program, eliminating the positions of 5,600 educational personnel. While it is our hope that increased State aid to education will allow us to reduce somewhat the size of these dollar and personnel reductions, the City's Board of Education will be required to bear its fair share of budget restraint. It is always had to translate such real liabilities into precise numbers of teachers, police or fire-fighters who will be laid off or not hired. However, as an indicator of how much a dollar will buy in services, you should know that each \$1 million is the equivalent of 41 teachers or 30 police officers. Given how few discretionary items there are in the City's budget, the \$1 billion cost of S. 372 will undoubtedly result in further police, fire, educational and sanitation reductions.

There have been some unsubstantiated suggestions by opponents in litigation that our figure of approximately \$862 million in additional liabilities is not accurate. Our cost estimates have been reviewed carefully by the Chief Actuary for the City of New York and by independent outside sources. We reiterate to this Committee that the added liabilities will be in this range, if not more.

As to how this \$862 million will be paid, there have been comments suggesting that the impact can be somehow lessened through various funding or cost allocation techniques. First, it has been suggested that we could make up the \$862 million liability through member contributions. To do this, however, we would have to increase these contributions by an average of about 35 percent a year. Even assuming that we were able to pass these substantial costs on to the employees, any increase in contributions may well be borne by the City as municipal unions seek increased salaries or other benefits to offset this increased employee cost. Second, some have suggested that we amortize the increased cost over thirty or forty years. State legislation, however, requires the City to amortize unfunded pension liabilities over the future working lifetime of the retirement system members. This time period ranges between ten and sixteen years for the different retirement systems. This state legislation quite correctly requires the City to end the practices of the not so distant past of mortgaging our unfunded liabilities for forty years or more as a way of ignoring the real fiscal costs.

III. OTHER SOLUTIONS

One of the reasons I am testifying today is to sound the alarm as to the cost of S. 372 to New York City's pension systems. The other reason, however, is to share with the Committee some of the expertise which we have gained over the past year in attempting to resolve problems of alleged sex discrimination in retirement contributions and practices. As the Committee may be aware, in 1981 the New York City Employees Retirement System was found to have violated Title VII by using sex-based mortality tables in determining women's contribution and benefit levels. The case is *Women in City Government United v. City of New York*. We are currently involved in the remedy stage of the case. The Court is attempting to devise a solution that will provide equality and yet not impose the financial hardship that the Supreme Court in *Manhart* so clearly disallowed. We have suggested two approaches.

First, a "weighted midpoint" solution which would treat our entire work force as one group would resolve the inequality by moving to some new contribution and benefit level between that currently received by men and women. This would mean raising and lowering men and women to some new level that would reflect the actuarial experience of the entire retirement system. For example, assume that Helen G. and John G. are twins and that both have worked for the same number of years in the same job at the same salary. If they both chose the maximum retirement allowances at retirement, Helen would earn \$2,852 and John \$2,878. If we were to

go to a "weighted midpoint" solution, both would earn \$2,870, with Helen gaining \$18 and John losing \$8. Such a solution was recently approved by the Second Circuit Court of Appeals in *Spirit v. TIAA-CREF* and by the United States District Court for the Central District of California in *Shaw v. International Machinists Union*. That is, a weighted mid-point, would not increase the obligations of the system with regard to its active members (while equalizing all benefits and contribution levels), and might cost up to \$107 million depending on how, if at all, it was to be applied to current retirees.

A second possible remedy would be to treat women like men for benefits and contributions. This second solution would mean that women would be raised to the level of men where men are eligible for higher benefits and potentially lowered where men would receive less than women. The cost of such a change would be significant but below the cost of increasing benefits across the board. The cost of this would be as high as \$113 million depending on how, if at all, it was to be applied to retirees.

The female members of our retirement system would of course gain more under S. 372 than they could under either of the two proposals that we have set forth. (Incidentally, of the \$862 million windfall in New York City alone, nearly three-fourths, or \$629 million, would be paid to men "topping off" to higher female benefit levels.) However, the purpose of the Act is not to create a windfall for men or women. The purpose is to create equality in contributions and benefits. Why should a remedy be adopted which unnecessarily harms large public retirement systems like those of New York City when there are equitable and less costly alternatives available?

IV. CONCLUSION

I strongly urge that Section 4 (c)(2) of S. 372 be amended to specifically permit the equalization of retirement benefits through the adoption of a weighted midpoint. Moving benefit and contribution levels to an average level will achieve the desired goal of equality while not unnecessarily increasing our liabilities. This is the responsible solution to an important social issue. New York City, as are all localities, is in a period of intense pressure on its resources. The pressure that is brought to bear will worsen if we do not make prudent choices in public policy.

Attachment.

THE COST AND BUDGETARY IMPACT OF S. 372 ON NEW YORK CITY

I. INTRODUCTION

The City of New York submits this statement to endorse the goal of sexual equality as stated in the Fair Insurance Practices Act ("Act") and to register New York City's strong objection to that provision of the Act which reaches this goal by the windfall device of simple increasing everyone's retirement benefits.

The Act represents a public consensus that women and men are to be treated as individuals rather than as members of actuarial groupings. This is an issue of great social importance to all responsive public officials concerned about women's rights. Responsible leaders, however, must be concerned about the means used to achieve this end.

Section 4(c)(2) of the Act would require a pension program to increase benefits to the level of the advantaged sex. "Topping-off", however, because of its enormous financial cost would be both seriously harmful to New York's efforts to maintain a reasonable level of basic services and is completely unnecessary to achieving the goal of equality. First, the Office of the Chief Actuary of the City of New York estimates that to comply with the "topping-off" provision of the Act would result in an increased liability for the City's pension systems of \$862 million. This amount must be spread out over the future working lifetime of the retirement system members, with a resulting cost to the City of nearly \$1 billion. Second, the solution proposed in the Act is completely unnecessary to ending the discrimination the bill is intended to remedy. Equality in pension benefits can be reached through other adjustments in benefit levels. We believe that the equalization of benefits and contributions to a midpoint level between the rates currently paid to men and women would be both equitable and fiscally responsible. Section 4(c)(2) of the Act should be amended to specifically permit public retirement systems to equalize retirement benefits through the adoption of a weighted midpoint rather than requiring the "topping off" windfall. To require that the future retirement benefits of all active members of our retirement systems be raised to the level of the advantaged sex

would be to extend the benefit of what has been found by the courts to be an illegal contract.

This unnecessary provision on the bill is disturbing for another reason. At a time when Congress is working so hard to preserve the future actuarial and financial soundness of the federal social security system, it is inconceivable that it would weaken state and local retirement systems by imposing unnecessarily billions of dollars of new liabilities on them. The Department of Labor has estimated that the topping-off solution could result in costs of upwards of \$1.7 billion a year for both private and public retirement insurance systems. As Clarence Thomas, Chairman of the EEOC pointed out in his February 24, 1983 testimony on the Nondiscrimination in Insurance Act, "The various approaches to equalization and their cost implications should be carefully considered before a single approach is legislated."

The purpose of this statement is to detail the City's estimate of the cost of S. 372, to describe the impact of this cost on the City and to explain the City's "weighted midpoint" proposal for equalizing pension benefits. The statement also emphasizes that the "topping off" proposed in S. 372 would give members of the "advantaged" sex the benefit of an illegal contract.

II. THE COST OF S. 372 TO NEW YORK CITY

New York City's five retirement systems are the New York City Employees Retirement System (NYCERS), the Teachers Retirement System (TRS), the Board of Education Retirement System (BERS), the Fire Department Pension Fund and the Police Pension Fund. As of June 30, 1981, these retirement plans had 293,837 active members and provided for 132,564 retirees. The following chart illustrates the breakdown of men and women in the different systems.

	Male	Female	Total
Actives:			
NYCERS.....	119,933	57,816	177,749
TRS.....	27,949	47,589	75,538
Police.....	22,624	881	23,505
Fire.....	11,331	.....	11,331
BERS.....	2,865	2,849	5,714
Total.....	184,702	109,135	293,837
Pensioners:			
NYCERS.....	53,573	22,221	75,800
TRS.....	7,481	22,185	29,666
Police.....	16,650	391	17,041
Fire.....	7,086	.....	7,086
BERS.....	1,335	1,636	2,971
Total.....	86,131	46,433	132,564

If these systems incur an increased liability, the City is generally not permitted to raise contribution rates or lower benefit levels. The staggering increase in liabilities required by the Act would most probably be paid out of the City's budget.

S. 372 proposes to achieve equality by lowering the total contributions that active female members make to the retirement systems and raising benefit levels. Such changes would result in a total cost of \$862 million to the City. Nearly three-fourths or \$692 million of the cost would be paid to men "topping off" to a higher female benefit level. Of the \$862 million, \$599 million would be the total cost for active members "topping off" to the highest existing benefit level while \$263 million would be the amount attributable to retirees "topping off."—As among the various retirement benefits offered by NYCERS, TRS and BERS, the greatest increase in the City's expenditure would result from adjusting upward the male benefits offered under the City's optional retirement plans to higher levels now offered women (women have done better under the options precisely because the prohibited sex-based actuarial tables have been used). The exact breakdown of the cost to the City of complying with S. 372 is instructive:

Cost of lowering contributions for active females:	Million
NYCERS.....	\$15
TRS.....	22
BERS.....	1
Total.....	38
Cost of increasing benefits for active females:	
NYCERS.....	24
TRS.....	94
BERS.....	1
Total.....	119
Cost of increasing retired female benefits:	
NYCERS.....	20
TRS.....	55
BERS.....	1
Total.....	76
Cost of increasing benefits for active males:	
NYCERS.....	230
TRS.....	162
BERS.....	13
Total.....	405
Cost of increasing option benefits for retired males:	
NYCERS.....	133
TRS.....	47
BERS.....	7
Total.....	187
Cost of increasing "death bed gamble" benefits for males:	
NYCERS.....	16
TRS.....	20
BERS.....	1
Total.....	37

Summary of total cost of compliance with S. 372 by New York City retirement systems:

(In millions of dollars)

	Liabilities	Annual city contributions to fund new liabilities		
		Actives	Pensioners	Total
NYCERS.....	438	33	18	51
TRS.....	400	21	7	28
BERS.....	24	2	1	3
Total.....	862	56	26	82

Under the funding method used by the retirement systems, any costs imposed by S. 372 would be amortized over the future working lifetime of the retirement systems' members. This figure varies among the affected retirement systems. The expected future working lifetime of NYCERS members is 10 years, for TRS members 16 years, and 11 years for BERS members. When the above costs are increased over the lifetime of the members, the cost increases to \$991 million. This amount was reached through the following method:

	Million
NYCERS—10 times 51 equals.....	\$510
TRS—16 times 28 equals.....	448
BERS—11 times 3 equals.....	33
Total.....	991

Taken as a whole, then, the City's financial burden as a result of S. 372 would be spread over sixteen years. That is, for the first ten years the cost would be \$82 million per year, \$31 million for the eleventh year and \$28 million for each of the subsequent five years.

A. The impact of S. 372's cost cannot be lessened through various funding or cost allocation techniques which have been suggested

As to how this \$862 million will be paid, there have been suggestions that the impact on the City can be somehow lessened through various funding or cost allocation techniques. First, it has been suggested that the City could make up the \$862 million liability through member contributions. To do this, however, contributions would have to be increased by an average of about 35 percent a year. Even assuming that the City were able to and chose to initially pass these substantial costs on to the employees, any increase in contributions may well be borne by the City as municipal unions seek increased salaries or other benefits to offset such an increased employee cost. Second, some have suggested that we amortize the increased cost over thirty or forty years. State legislation, however, requires the City to amortize unfunded pension liabilities over the future working lifetime of the retirement system members. This time period ranges between ten and sixteen years for the different retirement systems. This State legislation quite correctly requires the City to end the practices of the not so distant past of mortgaging our unfunded liabilities for forty years or more as a way of ignoring the real fiscal costs. It is also important to remember that spending such a cost over a greater span of years would significantly increase the \$862 million total cost.

B. Critical comments of the city's cost estimates reflect a basic misunderstanding of how the city's retirement systems operate

Our estimate of about \$862 million in additional liabilities has been reviewed carefully by the Chief Actuary for the City of New York and by independent outside sources. We reiterate to this Committee that the added liabilities will be in this range, if not more. There have been some critical comments by the City's opponents in litigation of this estimate of additional liabilities. These criticisms have been misleading and reflect fundamental misunderstanding of how the City's retirement systems operate. Set out below is a brief description of the criticisms made to date and a general response.

Excess earnings.—Our opponents in litigation suggest that the investments of the assets of the City's retirement systems have earned "excess" interest over the past two fiscal years and that we could therefore afford to pay an additional \$82 million a year to "top off" benefits. These earnings are said to be in "excess" of the assumed rate of interest set by statute.

Assumed interest rates in retirement systems are arrived at differently than interest rates for a private investor. Pension systems have to estimate what the probable rates of return will be over a very long time period. This is to make sure that funds will be available to pay obligations that are fifty to seventy-five years away. To make such long term estimates, an actuary has to examine the volatility in the range of interest rates over many years and set the estimated rate of return accordingly.

The fact that our investments may have been doing well during the last two years may give rise to the need to reassess the assumed rate of return in order to ascertain if these earnings are consistent with the past trends. If they are then the assumed rates may be adjusted after legislative approval. In fact, that is what happened with the two examples which have been cited by our opponents. During the year when the retirement systems allegedly had "excess earnings" the assumed rate of interest was 5½ percent. As the result of the earnings during those two years, and many previous years, the State and the City's Chief Actuary concluded that the City should adopt a 7½ percent interest rate.

Even if we assume that the City's retirement systems had earned more than was estimated by the City's Chief Actuary, this fact is only meaningful if the actuarial losses are also included in the analysis. In fact the "excess earnings," as described by our opponents, were more than offset by the continued use of a salary increase assumption that has always been two or three points below the salary gains won by City employees through collective bargaining. This is relevant because our retirement systems are funded on an actuarial basis. This means that the funding is based on many actuarial assumptions, including mortality, rate of interest and future salary increases, among others. As in any pension system, these assumptions can, individually, yield both gains and losses. What is most important is the net gain or loss from the total effect of all these assumptions. In our system, some of the

actuarial assumptions have led to gains. We also, however, have losses. For example, while a retiree's benefits are calculated on overtime earned in their last year, we do not pre-fund for this cost. Additionally, the retirement systems' funding method uses rates of salary, which, though accurate for long periods of time, are significantly lower than the actual salaries paid in recent years. Opponents are quick to point out the actuarial gains in our systems, but they completely ignore such actuarial losses. The funding method, which is based on the net effect of all these assumptions, has provided a stable annual city contribution for the past years. This is clear evidence that there is little, if any, net profit in the system.

Winkelvoss study.—Our opponents make reference to a 1981 study by a consultant named Howard Winkelvoss which predicted that if certain economic assumptions and legislative provisions held constant, the City's yearly contribution to the retirement system would decrease from its current 24 percent of payroll to under 10 percent over a ten-year period. If this were to happen, so the argument goes, the City would then have "extra" money to fund the \$862 million required by the "topping off" proposal.

The Winkelvoss study, however, like many consultant studies, is based on a particular model with specific assumptions and is useful only insofar as the assumptions and analysis remain valid. The study assumed that the City's pension system funding method would remain constant and that inflation would continue at 10 percent. The Winkelvoss assumptions have in fact changed. The City has since been required by State law to fund its retirement systems according to generally accepted accounting principles (GAAP). This means, for example, that extended amortization periods and many other accounting methods that the City was able to use in the past are no longer permissible. Additionally, inflation has gone significantly below the 10 percent rate predicted by the study. It is also interesting to note that the Winkelvoss study has been examined by several independent actuarial consulting firms, all of whom have raised serious questions about the study's methodology and cast doubt on whether any conclusions can be drawn from its economic model. In fact, because its assumptions have proved erroneous, the study's actual predictions for the City's contribution levels (predicting reductions) have been simply wrong for the two years since it was issued.

Estimated female contribution rates.—Plaintiffs assert that the Chief Actuary's cost calculations are flawed because he overstates the amount of contributions made by female retirement system members. It is claimed that many female members make little if any contributions because New York State law permits them to offset social security contributions.

This criticism demonstrates a misunderstanding of how the retirement system's annuity reserve funds are calculated. With respect to retirees, the costs reflect an amount of contribution actually credited to each participant. With respect to active members under guaranteed plans, the additional liabilities reflect the cost that would be incurred by lowering the amount that each female would be required to have on hand at the completion of the guarantee period. This required amount is independent of the member's election to reduce or not to reduce his or her contribution. The cost estimate with respect to active members from non-guaranteed plans also reflects the amount of contributions which are credited to each individual member.

Interest on annuities.—It is claimed that the City makes money in the retirement system because members receive 4 percent interest on their annuities but the City in reality assumes that such annuities earn 8 percent. That is, the City earns about 4 percent on each member's contribution.

As noted above, such a contention simply ignores the fact that individual actuarial assumptions may yield both gains and losses. The net gain or loss for the entire system, which is of course the more relevant figure, is based on the operation of all the individual assumptions. The interest rate discrepancy indicated by our opponents results in a very small actuarial gain. The gains in this area are offset to a great extent by a state constitutional requirement that member benefits be determined on the basis of very favorable mortality tables that are no longer valid (and which, therefore, create an actuarial loss). We also have losses such as our failure to pre-fund the retiree benefits that accrue as a result of overtime earned during a member's last year. As noted above, our opponents are quick to point out the actuarial gains in our systems, such as these interest factors, but they ignore the actuarial losses.

\$10 to \$15 million surplus.—Our litigation opponents, focusing on another individual example of an actuarial gain, claim that the City's retirement systems enjoy a \$10 to \$15 million a year surplus as a result of the fact that our option benefits are not currently actuarially equivalent. This estimate was included in an overall de-

scription of the City's various actuarial gains and losses in an audit by Peat-Marwick, an independent accounting firm.

This claim is similar to many of those described above. Any pension system has net actuarial gains and losses. This particular gain is taken into account by the Chief Actuary during the calculation process and offset against other losses. The proof that these gains and losses offset each other is the fact that the annual City contribution has remained stable. This is clear evidence that there is little, if any, net profit in the system.

III. FINANCIAL IMPACT IS A FACTOR IN EQUALIZING PENSION BENEFITS

When federal courts have had to devise remedies for cases of sex discrimination in pension programs, the solutions have always reflected an essential concern for the financial impact of any solution on the retirement system and the funding political entity. In *Los Angeles Department of Water and Power v. Manhart*, 435 U.S. 702 (1978), the Supreme Court cautioned lower courts about the special care required in fashioning appropriate relief—the risks and approaches to be avoided. Though finding liability, the Court vacated the only relief ordered by the Ninth Circuit Court of Appeals and the District Court, criticized the District Court for its insensitivity to the impact of its order and went to great lengths to emphasize the need for caution in this area.

Thus, while courts have ruled that Title VII requires male/female equality in contributions and benefit dollars—as this Act would mandate in broader areas—the Supreme Court just as clearly cautioned lower courts that “[r]etroactive liability could be devastating for a pension fund” (435 U.S. at 722) and that the court should not remedy the situation by forcing pension plans “to meet unchanged obligations with diminished assets” (435 U.S. at 723). Consistent with this, the Supreme Court shortly after *Manhart* ruled that it is wrong to “force a current recalculation of . . . past . . . years’ contributions based on new unanticipated” pension benefits because this changed an employer’s “obligation in an area where the element of reliance was vital—the funding of a pension plan.” *Allied Structural Steel Company v. Spannaus*, 438 U.S. at 233, 246 (1978).

The time for adoption by Congress of the weighted midpoint solution is ripe in light of the Second Circuit Court of Appeal decision in *Spirit v. TIAA-CREF et al.*, No. 797715, slip op. (Sept. 29, 1982). In *Spirit* the Second Circuit affirmed the District Court’s order that defendants use unisex mortality tables in computing annuity benefits. In discussing the weighted midpoint solution the District Court stated that:

“The relief granted in the instant case will not involve an unanticipated payment by CREF which would force it to meet unchanged obligations with diminished assets. Rather the relief granted in this case will merely vary the future allocation and distribution of an unaffected amount of assets.” *Spirit*, 475 F Supp 1298, 1317 (S.D.N.Y., 1976).

The Second Circuit echoed the District Court’s concern and stated that “the equalization of the amount of montly payments to be received by similarly situated male and female employees can be calculated so as not to change the total anticipated obligations of the funds.” *Spirit*, slip op. at 5064.

A. Budget overview

As indicated above, the Supreme Court has required that in achieving pension equality the fiscal impact on the funding entity must be understood so as not to impose burdens that will have unexpected financial consequences. In assessing this factor, it is important to understand the budget process used by New York City.

As in every governmental entity or private corporation, New York City is required to submit and maintain a budget. The City’s budget, however, must be balanced according to a very stringent requirement—Generally Accepted Accounting Principles (GAAP). This requirement is one which the City is obligated to meet by State law and to which it is fully committed as a matter of both law and policy. Given the City’s past financial difficulties, which it has overcome through great sacrifices and discipline, and the recent shift in fiscal policy in Washington, D.C., developing and maintaining such a balanced budget demands no less than a full and rigorous commitment.

The Expense Budget is a fiscal plan to finance the operation of the City. It delineates the amounts of money the City expects to spend each year for ongoing operational expenses. It also includes money which must be allocated for the cost of interest and repayment of the debts and payments for income maintenance, medical assistance and child care.

The City appropriates in the Revenue Budget the funding sources required to support the Expense Budget. The Revenue Budget delineates by revenue source the estimates of revenue to be realized during the fiscal year. Sources of revenue to the City include taxes; proceeds from the sale of licenses and permits; federal, state and private categorical grants; and other miscellaneous items such as interest and rental income.

Since long-term investment in the City's physical plant is an important element of New York City government, the City's Capital Budget is a plan for making such investments. The Capital Budget indicates how the City proposes to commit and contract for spending to construct and upgrade its capital facilities.

The City's flexibility in balancing its budget is limited because virtually half of the appropriations are basically uncontrollable. Certain costs are fixed for such items as debt service, pension contributions, public assistance and Medicaid. In addition, the remainder of City-funded appropriations are primarily in those agencies which provide essential services such as police, fire, sanitation and education. Where labor contract provisions establish minimum manning levels, post coverage, student-teacher ratios and other similar work rules, the City loses further flexibility over its budget.

B. Financial plan for fiscal year 1983-87

The Mayor also submits a four-year plan for approval to the Financial Control Board, an agency created in 1976 by the State to monitor the City's fiscal affairs. The City's Expense and Capital Budgets detail the first year of the four-year Financial Plan under which the City operates. The Financial Plan, which must be approved by the Financial Control Board, encompasses the City's revenue, expenditure, cash flow and capital projections as well as the operations of certain public benefit corporations such as the Health and Hospitals Corporation and the Transit Authority.

In order to assure that the goals of the Financial Plan and budget are met, the City reviews its Financial Plan quarterly and prepares modifications, if necessary, to incorporate actual results and revisions to assumptions. The modifications are based on current information, including discussions with a panel of private economists analyzing the effects of changes in economic indicators on City revenues. This modification process is designed to provide the City with an opportunity to take remedial actions, in the event of revenue shortfalls or expenditure overruns, to achieve the goals of the Financial Plan and maintain a balanced budget.

On January 18, 1983, the Mayor submitted his most recent four-year Financial Plan to the City's fiscal monitors. On February 17, this plan was adopted by the Financial Control Board. The period between now and mid-May will be used to fine-tune the City's budget estimates. At that time, the detailed line-by-line budget proposals will be presented to the City Council and Board of Estimate of the City. At the commencement of the City's fiscal year on July 1, 1983, the City will have a precise course of action to maintain a balanced budget for the City's fiscal year 1984.

C. Effect of S. 372 cost

What does \$862 million mean in the context of the City's current budgetary picture? We cannot always accurately anticipate the levels of state and federal aid even as our budget deadline draws near. Still, the City's Financial Plan for Fiscal Years 1983-87 does assist us in understanding what such sums may mean to our efforts to balance our budget, which by law we are required to do. For example, because of fiscal stringencies in 1983, we did not hire 1,000 additional police officers previously budgeted. In this area alone, therefore, we had to reduce our previously planned expenditures by \$26 million in 1982-83, and growing to a full year value of over \$38 million in 1982-1984. Police protection is obviously a very high priority in New York City, but continuing fiscal restraints have required the City to lower its uniform police strength from 30,552 in 1975 to 24,095 in 1983. Another high priority service is education, an area in which the City has faced rapidly rising special education costs. Despite our desire to improve the quality of education in New York City, it will be necessary in 1984, as in the past, to seek substantial cuts. For example, our most recently approved financial plan calls for a \$168 million reduction program, eliminating the positions of 5,600 educational personnel. While it is our hope that increased State aid to education will allow us to reduce the size of these dollars and personnel reductions, the Board of Education will be required to bear its fair share of budget restraint. It is always hard to translate such real liabilities into precise numbers of teachers, police or firefighters who would be laid off or not hired. However, as an indicator of how much a dollar will buy in services, you should

know that each \$1 million is the equivalent of 41 teachers or 30 police officers. Given how few discretionary items there are in the City's budget, the \$1 billion cost of S. 372 will undoubtedly result in further police, fire, educational and sanitation reductions.

Much of the complexity of budget issues stems from the fact that the City provides a wide range of services because we are required to do so by State and Federal law and by the needs of our residents, which have always included a large number of new immigrants to this nation. The City is responding directly to the urgent needs of the homeless, the infirm and the elderly. Our ability to meet these and other critical needs will be seriously diminished if Congress does not make prudent choices in public policy. Additional costs of the magnitude that would be unavoidable because of S. 372 in its present draft are avoidable if Congress will recognize that there are easily available and fair alternative methods of solving the real problems that the Act seeks to address.

IV. THE WEIGHTED MIDPOINT PROPOSAL WOULD EQUALIZE PENSION BENEFITS AND BE FISCALLY RESPONSIBLE

One of the reasons the City is submitting this statement for the record is to sound the alarm as to the cost of S. 372 to New York City's pension systems. The other reason, however, is to share with the Committee some of the expertise which we have gained over the past year in attempting to resolve problems of alleged sex discrimination in retirement contributions and benefits. As mentioned above, in 1981 the New York City Employees Retirement System was found to have violated Title VII by using sex-based mortality tables in determining women's contribution and benefit levels. We are currently involved in the remedy stage of the case. The Court is attempting to devise a solution that will provide equality and yet not impose the financial hardship that the Supreme Court in *Manhart* so clearly disallowed. The City has suggested two approaches.

First, a "weighted midpoint" solution which would treat our entire work force as one group would resolve the inequality by moving to some new contribution and benefit levels between those currently used for men and women. This averaging would mean raising and lowering both men and women to some new levels that would reflect the actuarial experience of the entire retirement system. Such averaging would not increase the obligations of the system with regard to its active members (while equalizing all benefits and contribution levels), and might cost up to \$107 million depending on how, if at all, it was to be applied to retirees.

A second possible remedy would be to treat women like men for benefits and contributions. This second solution would mean that women would be raised to the level of men where men are eligible for higher benefits and potentially lowered where men would receive less than women. The cost of such a change would be significant but below the cost of increasing benefits across the board. The cost of this would be as high as \$113 million depending on how, if at all, it was to be applied to retirees.

The female members of our retirement system would of course gain more financially under S.372 than they could under either of the two proposals that we have set forth (although, as noted before, of the \$862 million windfall in New York City alone, nearly three-fourths, or \$692 million, would be paid to men "topping off" to higher female benefit levels). However, the purpose of the Act is not to create a windfall for men or women. The purpose is to create equality in contributions and benefits. Why should a remedy be adopted which unnecessarily harms large public retirement systems like those of New York City when there are equitable and less costly alternatives available?

V. "TOPPING OFF" WOULD GIVE THE "ADVANTAGED" SEX THE BENEFIT OF AN ILLEGAL CONTRACT

The primary rationale advanced in support of the "topping-off" proposal as opposed to other means of equalization is that benefit levels are contract rights and as such are protected by state and federal law. Therefore, the argument continues, the only way to eliminate any discrepancies in benefits is to make each sex the "advantaged" sex by increasing benefits. It is claimed that such a windfall is mandated by the U.S. Constitution (and, our litigation opponents claim, by the New York State Constitution).

The assertion, however, is without merit. Federal and state laws governing sex discrimination and pension rights do not and should not purport to enlarge the benefits of membership. More importantly, these laws do not set a retirement system above the rules of law that define and limit the obligations of parties to a

contractual relationship. One of those rules is that a contract which violates the law, or one contrary to public policy, is void or unenforceable. It is axiomatic that a contract to discriminate is just such a void or unenforceable contract. *Shelley v. Kramer*, 334 U.S. 1, 22 (1948); *Barrows v. Jackson*, 346 U.S. 249, 260 (1953); *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 420-422 (1968) *Lee v. Habib*, 424 F. 2d 891, 902 (D.C. Cir. 1970) *Shelley v. Kramer*, 334 U.S. 1 (1948). Thus, neither men nor women who are members of the retirement system and are the "advantaged sex" in regard to a particular benefit or contribution level or lower contribution levels have any legal claim to the higher benefits that came to them from the use of the sex-based actuarial tables that federal courts have declared illegal. Their legal and equitable posture in this regard is not better than that of "a fence who objects to returning stolen property on the ground that he would be able to keep it because the thief would not be caught." Schnapper, "Perpetuation of Past Discrimination," 96 Harv. L. Rev. 828, 847 n. 80 (1983). The law, including the New York State Constitution, does not recognize such expectancies as legitimate.

Title VII.—This reasoning has persuaded at least two federal district courts in Title VII actions to disregard objections to proposed relief involving the use of unisex actuarial tables and consequent adjustments of benefits on the ground that advantaged men had a vested right to higher level of benefits. In *Spirt v. Teachers Insurance and Annuity Association*, 416 F. Supp. 1019 (S.D.N.Y. 1978), the Court stated:

"In fashioning a remedy to correct violations of . . . [Title VII], the Courts cannot be deterred by fears of potential adverse impact upon beneficiaries of a discriminatory status quo. There can be no vested interest in an unlawful practice." [Emphasis added.] 416 F. Supp. 1019-10. The Court in *Henderson v. Oregon*, 405 F. Supp. 1271 (D. Oregon, 1975), similarly responded to an argument that unisex life expectancy tables would reduce the vested benefits of advantaged men who have contributed to the retirement fund.

"A man has a right to benefits as an individual—not as a member of a class of men. He has no right to receive larger benefits because he is a man, any more than he has a right to receive larger benefits because of race, color, creed or nationality. That is what Title VII requires. 405 F. Supp. at 1276."

Both decisions find support in the decision of the United States Supreme Court in *Franks v. Bowman Transp. Co., Inc.*, 424 U.S. 747 (1976), in which it upheld a grant of retroactive seniority to the victims of discriminatory employment practices, notwithstanding the adverse impact on white employees hired into positions from which blacks had been illegally excluded. There, the Court rejected the argument that the seniority system imposed by the decree deprived white employees of indefeasible vested rights conferred by the employment contract, because contractual expectancies, even those characterized as "vested rights" under state law, must fall before a court adjudication of discrimination in violation of Title VII. 424 U.S. at 774-779. Justice Powell concurred in part and dissented in part, arguing that the white employees were "innocent" third parties who should not be penalized because of their employer's discriminatory practices (*see id.* at 781-99), but even he would apparently concede that an employee has no legitimate expectancy in benefits that result from discrimination against others, and which derive in no part from the employee's own efforts and satisfactory performance. *See id.* at 789 n. 7; *cf. Fullilove v. Klutznick*, 448 U.S. 448, 485 (1980) (white contractors adversely affected by minority program personally benefited from past discrimination). For like reason, neither men nor women who are members of the retirement system have a legal entitlement to retain the windfall of higher benefits that came to them solely because of the use of illegal, sex-based actuarial tables. It is well-established that relief under Title VII "cannot be denied merely because . . . employees who have not suffered discrimination, will be unhappy about it . . ." (*United States v. Bethlehem Steel Corp.*, 446 F. 2d 652, 663 (1971)); or because such relief "diminishes the expectations of other, arguably innocent, employees" (*Franks et al. v. Bowman Transportation Co. Inc.*, 424 U.S. *supra* at 774 (1976)). The City's weighted midpoint proposal balances the illegal windfalls which each "advantaged" sex has received and restores those who have been "disadvantaged" to the position they would have been in were it not for the unlawful practice. *See, Manhart v. City of Los Angeles*, 435 U.S. at 420.

New York State Constitution.—Although Article V, section 7 of the New York State Constitution protects pension benefits, New York courts have justified the alteration of existing pension programs which include an increase in coverage and the extension of rights. The midpoint solution would do just this by establishing sexual equality and giving women larger maximum retirement allowances and a lower contribution rate and men greater option and death benefits.

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In *Dunn v. City of New York*, 7 NY2d 232, members of the New York City Fire Department Pension Fund were given a benefit by the legislature—four years of credit towards retirement for time served in the military during World War II. The modification caused by the benefit was that the retiree was required to make up the actuarial deficiency for those four years. In response to the charge that the retroactive charges impaired the legislative benefit granted, the Court responded:

"Notwithstanding the circumstance that membership in the system is in the nature of a contract, 'the benefit of which shall not be diminished or impaired' (N.Y. Const., art V. § 7), such membership does not operate to give Dunn a vested interest in the maintenance of a rate based on factors not considered in light of the subsequently conferred benefit. When the Legislature gave members a credit for their military service and thereby accelerated the retirement date, it gave a benefit which was necessarily conditioned on a revision of the obligations and responsibilities of the respective parties."

In *Michael v. Bellamy*, 80 AD2d 147, 153 (1981) at issue were changes in Federal legislation which raised the age under NYCERS at which an employee may be mandatorily retired from 65 to 70. The effect of the change in NYCERS was that some employees who chose to retire at 65 received significantly reduced pensions. The Court held that, while the pension benefit was modified, there was a benefit conferred. The change of mandatory retirement age by the overriding Federal law was a benefit to system members. It permitted them to continue working until age seventy.

In the instant case there can be little question but that our proposed plan would benefit both males and females where they are the advantaged sex. First, by adopting the midpoint solution the benefit of equality of classification would be reached. Second, females would benefit financially by enjoying lower contribution rates and a higher maximum retirement allowance, and males would benefit by receiving higher option and death benefits. These concrete financial gains would affect all members who chose these benefits.

VI. CONCLUSION

The City of New York strongly urges that S. 372 be amended to specifically permit equalization of retirement benefits through the adoption of a weighted midpoint. Moving benefit and contribution levels to an average achieves the goal of equality and is fiscally responsible. New York City, as are all localities, is in a period of intense pressure on its resources. The pressure that is brought to bear will worsen if we do not make prudent choices in public policy.

The CHAIRMAN. I have no further questions. Thank you for taking the time to come. We appreciate it.

Let us move on to our panel, Mr. James Hacking, Ms. Althea Simmons, J. Robert Hunter, and Ms. Elaine Donnelly. Dr. Kerschner, I believe you are here on behalf of Mr. Hacking. Is that right?

Dr. KERSCHNER. Yes, sir. I am substituting.

The CHAIRMAN. Let me hold up just a moment until we get the door closed and get the people out.

Doctor, go right ahead.

STATEMENTS OF PAUL A. KERSCHNER, ASSOCIATE DIRECTOR, AMERICAN ASSOCIATION OF RETIRED PERSONS; METRA JACKSON, LEGISLATIVE AIDE, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; J. ROBERT HUNTER, PRESIDENT, NATIONAL INSURANCE CONSUMER ORGANIZATION; AND ELAINE DONNELLY, NATIONAL MEDIA CHAIRMAN, EAGLE FORUM

Dr. KERSCHNER. Thank you.

I represent the American Association of Retired Persons, Senator, with 14.6 million members.

Let me make two comments, and I will read my brief statement. First, the villain here seems to be the American medical communi-

ty. Is it now a crime to live too long? Perhaps we should mandate an early demise on the part of women, and this whole problem would go away.

The second issue I wanted to comment on is, yes, there may be some costs related to this issue, but to paraphrase the National Education Association, if you think equality is expensive, try discrimination!

Let me read our brief statement, Senator.

The American Association of Retired Persons appreciates the opportunity to appear in support of S. 372, which will prohibit discrimination in insurance on the basis of race, color, religion, sex, or national origin. The association is interested in S. 372 because we feel it is a step, but only a small one, toward addressing the severe economic plight of many older women.

According to 1981 statistics, single women aged 65 to 71 suffer a poverty rate of 27.6 percent, while single women age 72 and over have an even higher poverty rate of 31.7 percent. One major insurance product in which sex-based distinctions act as a detriment to women is the annuity.

Different premium rates and or benefit payments are justified according to the insurance industry based on the fact that women as a class live longer than men. The industry claims that fairness requires each class of risk be charged rates appropriate to the cost arising from that risk, and therefore finds sex a valid criterion for determining insurance rates and benefits.

However, in reality, most men have the same death age as most women. In fact, statistics show that only approximately 14 percent of all women have different death ages than men. Thus, because 14 percent of the women do not match the death ages of the men, the industry discriminates against women as a class in annuity payments.

Any number of selective criteria can be used as the basis for risk classification. These criteria relate to the types of risk that influence life expectancy. While insurers maintain that sex is an economic classification factor, and indeed it is convenient, other less arbitrary and invidious classification schemes could be used without compromising economic rationality, such as occupation, health, and family medical history. There is no basic difference between sex discrimination and race discrimination. Each is equally harmful. Each imposes group discrimination on an individual because of a factor over which the individual has no control.

Insurance companies use gender classifications because they are easy to apply. Many insurance companies ignore other more relevant classification criteria affecting life expectancy. The industry's failure to use other criteria besides sex significantly reduces the credibility of the insurance companies' claim that fairness requires each class of risk be charged rates appropriate to the cost arising from that class.

Sex is not the only possible source of variations in mortality rate. Other possible risk classification factors include race, age, socioeconomic status, religion, habits, hobbies, lifestyles, and as we heard earlier, living in the District of Columbia.

Thus the concept of actuarial equity involves a value judgment of determining which factors will be employed. For reasons of social

policy, certain classifications that may be perfectly useful from an actuarial standpoint should be barred. For instance, while discrimination based on race is more "economically rational" than color-blind insurance classification schemes, society has generally rejected racial discrimination, and the insurance industry has followed suit.

As mentioned in our full statement, the *Manhart* case and court decisions that followed prohibit discrimination in employment related pensions by relying on title VII of the Civil Rights Act. When discrimination occurs in an employment setting, the courts have been able to grant appropriate judicial relief and balancing the interests of all parties involved.

Our association believes that Congress can achieve a similar balance when designing a remedy to the insurance discrimination problem. Any such legislative relief should take into account the industry's concern that the elimination of sex discrimination insurance not impair their financial strength or hinder their ability to complete their long-term obligations.

At the same time, civil rights concern of individuals should be properly and promptly addressed. AARP would like to see a responsible approach taken to eliminate discrimination in insurance. An equitable implementation of S. 372 will accomplish this task, thereby removing the arbitrary and unfair discriminatory policies currently practiced by the insurance industry.

Thank you.

[The statement follows:]

STATEMENT OF PAUL A. KERSCHNER, ASSOCIATE DIRECTOR, AMERICAN ASSOCIATION OF RETIRED PERSONS

The American Association of Retired Persons appreciates this opportunity to testify on S. 372, The Fair Insurance Practices Act. The Association supports this legislation which prohibits discrimination in the writing and selling of insurance contracts on the basis of race, color, religion, sex, or national origin.

Gender-based discrimination in the insurance industry is both widespread and varied. While many states prohibit unfair trade practices, few proscribe sex discrimination. Women not only face barriers in applying for insurance but also are treated unfairly in policy terms and premium rates.

The Association is especially interested in S. 372 because of the serious financial problems many older women face. Older women as a subgroup of the elderly population tend to have the lowest incomes and the highest poverty rates. For example, in 1981 while the poverty rate for older persons 65+ was 15.3 percent, the poverty rate for older women was 18.6 percent. According to 1981 statistics, single women age 65-71 suffer a poverty rate of 27.6 percent while single women age 72+ have an even higher poverty rate of 31.7 percent. We sincerely hope that these hearings can lead to the elimination of some of the discriminatory practices which operate to the detriment of older women.

Federal legislation is needed to alleviate the inequitable treatment of women in obtaining life, health and disability insurance and in the pricing of annuities. The insurance industry argues that state laws are adequate to prevent discrimination on the basis of race, color, religion, sex, and national origin. Forty-eight states have adopted an unfair trade practice act prohibiting unfair discrimination in insurance, while nineteen states have adopted an antisex discrimination in insurance statute.

Most of the state unfair trade practice acts are limited in scope, prohibiting only unfair discrimination between individuals that have an equal expectation of life as a class. Thus, these laws do not go far enough since statistics can often show that members of various classes do not have equal expectation of life. None of these laws specifically refer to race, color, religion, sex, or national origin, and there have been no court decisions indicating that the laws apply to these criteria. The specific statutes prohibiting sex discrimination in insurance are also equally limited in scope.

These statutes apply only to availability, coverage, and conditions of insurance and not to sex discrimination with regard to rates and costs.

Furthermore, while the Supreme Court decision in *L.A. Department of Water & Power v. Manhart* and decisions that followed prohibit discrimination in employment-related insurance and pensions, the individual purchaser is left without protection. Because these decisions are based on Title VII of the Civil Rights Act, it would be difficult, if not impossible, for the courts to extend the *Manhart* prohibition to non-employment-related insurance. Hence, federal legislation is needed.

The insurance industry has argued that the statistical association between sex and mortality justifies the use of sexually segregated actuarial tables. According to life insurance companies, sex has continually been a prevalent factor in determining premium rates that accurately reflect the cost of risk of insuring people. Segregated tables reflect the difference in longevity between men and women as a class. Therefore, life insurance is cheaper for women than for men while the opposite results for annuities. When integrated tables are used, data from both sexes are pooled and the sexes bear equal costs for both life insurance and annuities. There is evidence that even where gender-based tables are used for both life insurance and annuities, the annuities setback is inflated as compared to the life insurance setback—to the disadvantage of women.

Different premium rates are justified, according to the industry, based on the fact that women, as a class, live longer than men, and it claims that fairness requires each class of risk be charged rates appropriate to the costs arising from that risk. It, therefore, finds sex a valid criterium for determining insurance rates and benefits. However, in reality, most men have the same death age as most women. In fact, statistics show that only approximately 14 percent of all women have different death ages than men. Thus, because 14 percent of the women did not match the death ages of the men, the industry discriminates against women in annuity payments. Certainly, this 14 percent figure does not justify extreme sex-based differentials in policy treatment.

In addition, the insurance companies have stated that the use of sex-distinct mortality and morbidity actuarial tables, life expectancy charts, and disability statistics are necessary primary-pricing tools. Because competitive pressures in the private insurance market require insurers to distinguish between better and poorer risks, insurers must be able to classify insureds for rating purposes according to the expected risk of loss. It is therefore argued that such classifications will inevitably lead to fair pricing.

Any number of selective criteria can be used as a basis for risk classification. These criteria relate to the types of risks that influence life expectancy. The industry argues that sex discrimination is justified because female longevity is a genetic or biological characteristic. However, many major investigators now believe that social, cultural, environmental, and behavioral factors are more important than genetic or biological factors in explaining sex mortality differences. While insurers maintain that sex is an economical classification factor, and indeed it is convenient, other less arbitrary and invidious classification schemes could be used without compromising economic rationality (e.g. occupation, health, family medical history).

There is no basic difference between sex discrimination and race discrimination. Each is equally harmful and immoral; each imposes group discrimination on an individual because of an immutable factor that may not be causally related to life expectancy. Insurance companies use gender classifications because they are easy to apply, but many insurance companies ignore other more relevant classification criteria affecting life expectancy. The industry's failure to use other criteria besides sex significantly reduces the credibility of the insurance companies' claim that fairness requires each class of risk be charged rates appropriate to the costs arising from the class.

The insurance industry is regulated by the government with the aim of advancing social goals. It is obvious that not all social goals may be harmonized with purely economic considerations. Sex is not the only possible source of variation in mortality rates. Other possible risk classification factors include race, age, socio-economic status, religion, habits, hobbies, and lifestyles. Thus, the concept of actuarial equity involves a value judgment in determining which factors will be employed. For reasons of social policy, certain classifications that may be perfectly useful from an actuarial standpoint may be barred. For instance, while discrimination based on race is more "economically rational" than color-blind insurance classification schemes, society has generally rejected racial discrimination and the insurance industry has followed suit. Thus, there is now an equitable distribution of cost without the consideration of race as an economic factor. There is little reason why this equity cannot be extended so as to proscribe the use of sex-based actuarial tables.

As stated earlier, *Manhart* and court decisions that followed prohibit discrimination in employment-related pensions by relying on Title VII of the Civil Rights Act of 1964. When discrimination occurs in an employment setting, the courts have been able to grant appropriate judicial relief by balancing the interest of all parties involved. The Association believes that Congress can achieve a similar balance when designing a remedy to the insurance discrimination problem. Any such legislative relief should take into account the industry's concern that the elimination of sex discrimination in insurance not impair their financial strength and hinder their ability to complete their long-term obligations. At the same time, the civil rights concerns of individuals should also be properly and promptly addressed.

AARP would like to see a responsible approach taken to eliminate discrimination in insurance. An equitable implementation of S. 372 will accomplish this task, thereby removing the arbitrary and unfair discriminatory policies currently practiced by the industry.

The CHAIRMAN. Doctor, thank you.

Ms. Donnelly.

Ms. DONNELLY. Thank you, Mr. Chairman.

Senator Packwood, Senator Lautenberg, my name is Elaine Donnelly.

I am from Michigan, one of the four States that has been pointed to with pride as a State that has enacted a similar law.

I am here to tell you that that law for young women in Michigan has been a disaster. I am here to speak to you on behalf of the majority of women for whom groups like the National Organization for Women do not speak, and the majority of women who will pay an enormous price in real economic losses if this misnamed bill ever becomes law.

Most importantly, I am here to tell you about some newly discovered information about the effects of the law passed in Michigan in 1979, a law which forbids insurance companies to take sex and marital status into consideration in the setting of auto insurance rates. Equity in insurance requires providing equal costs for equal risks, but equity for women has been denied by the Michigan Essential Insurance Act of 1979.

Hundreds of dollars in rate hikes are being robbed right out of the pockets of young women who are least likely to have expensive accidents. Insurance companies have raised their rates by as much as 327 percent in some categories, and rates for some groups of young men have gone up as well. This is the truth of the matter which directly contradicts the testimony given earlier today.

What possible social good or civil rights purposes are being served when arbitrary, unjustified economic penalties are inflicted on whole classes of unsuspecting innocent people? The fact that this is being done in Michigan in the name of women's rights adds insult to economic injury. If the insurance companies were sponsoring this bill instead of the so-called women's rights advocates, the whole idea would be greeted with howls of outrage from one end of the country to the other.

This is why I am here as an informed private citizen, not connected with the insurance industry, to warn you that passage of a Federal bill to sex neutralize all kinds of insurance would be one of the most costly blunders Congress has ever made.

Please consider the following. This is a report from the Michigan Insurance Bureau entitled "A Year of Change—the Essential Insurance Act in 1981." The Essential Insurance Act was passed in late 1979 (effective January 1, 1981), after a debate that primarily

focused on the bill's prohibitions against insurance redlining in certain urban areas. There was virtually no public notice or debate on the few words inserted into the bill to eliminate sex and marital status as factors in the setting of home and auto insurance rates.

Early reports were that auto insurance rates for some classes of young women would be raised by as much as 195 percent, a triple increase. I have just learned in the last 3 weeks that the award for the highest rate increase in a single risk category should go not to the auto club, but to Citizens Insurance, which raised its rates by as much as 327 percent, more than four times as much as the policyholder would have paid before the law went into effect.

It does not help to shop around, either. Other well-known companies raised their rates for the same group of young women as follows. State Farm, 160 percent. Auto Owners, 103 percent. Trans-America, 140 percent. And Allstate, 242 percent. This is the actual effect of the law, not speculation.

The Michigan Insurance Bureau has done nothing to correct or even expose the enormity of this situation. In fact, as we have heard today already and will undoubtedly hear next, they are claiming that the law is a success and a positive influence for consumers. As you know, Michigan is being pointed to with pride as one of the States that we should emulate at the Federal level.

You should know that I would not have discovered all of this information without asking a lot of persistent questions from the Michigan Insurance Bureau. Their new official report, "A Year of Change, the Essential Insurance Act in 1981," discusses the truth about the law in a jumble of numbers and insurance code words, relativities, and other things like that.

But the most interesting thing about the Insurance Bureau's report is an item that is missing. Exhibit 5 displays only three tables instead of four. You have a copy of it attached to my testimony. The table of rate increases for young married females is not there. When I inquired as to why the table was missing, I was told there was no room and it had not been prepared. Therefore, I used my calculator and clues from the Insurance Bureau, and I prepared my own table, which you also have a copy of, and the results are truly shocking.

Is it not interesting that the missing table was the one that would have shown the steepest increases caused by the sex-neutralization law? Rate increases of this size constitute a new form of sex discrimination against young women. The insurance companies are not treating women as female individuals, and the law says that they cannot, but I place the primary blame for this not on the companies, although they deserve a large share of the blame, but on the legislators who passed the law.

Please do not impose the same mistake on the entire country.
[The statement follows.]

STATEMENT OF ELAINE DONNELLY, NATIONAL MEDIA CHAIRMAN, EAGLE FORUM

I am here to speak to you on behalf of the majority of women for whom groups like the National Organization for Women do not speak; and for the majority of women who will pay an enormous price in real economic losses if these misnamed bills ever become law.

Most importantly, I am here to tell you about some newly-discovered information about the effects of a smiliar law passed in Michigan in 1979—a law which forbids

insurance companies to take sex and marital status into consideration in the setting of auto insurance rates.

Equity in insurance requires providing equal costs for equal risks, but equity for women has been denied by the Michigan Essential Insurance Act of 1979. Hundreds of dollars in rate hikes are being robbed right out of the pockets of young women who are least likely to have expensive accidents, thus forcing them to subsidize the high accident experience of young male drivers. Insurance companies have raised rates by as much as 327 percent in some categories, and rates for some groups of young men have gone up as well.

The State Insurance Bureau has proclaimed the new law to be "positive" for consumers, while downplaying or disguising the facts that would prove otherwise. A table of figures that would have shown the highest rate increases for young women was curiously missing from their official report on the new Essential Insurance Act.

What possible "social good" or "civil rights" purpose is being served when arbitrary unjustified economic penalties are inflicted on whole classes of unsuspecting, innocent people? The fact that this has been done in Michigan in the name of "women's rights" only adds insult to economic injury. If the insurance companies were sponsoring this bill—instead of the so-called "women's rights advocates"—the whole idea would be greeted with howls of outrage from one end of the country to the other.

This is why I am here as an informed private citizen—not connected with the insurance industry—to warn you that passage of a federal bill to sex-neutralize all kinds of insurance would be one of the most costly blunders Congress has ever made. The result would be a new form of a arbitrary, unfair discrimination against women, the impact of which would fall hardest on the majority for whom individually-purchased life and auto insurance policies are a necessity, not a luxury. Please consider the following:

The Michigan Essential Insurance Act was passed in late 1979 (eff. January 1, 1981) after a debate that primarily focused on the bill's prohibitions against insurance "redlining" in certain urban areas. There was virtually no public notice or debate on the implications of the few words inserted into the bill to eliminate "sex" and "marital status" as factors in the setting of home and auto insurance rates. Before young women drivers in Michigan knew what had happened, many of them began getting letters from their insurance companies announcing rate increases of hundreds of dollars.

Early reports were that auto insurance rates for some classes of young women were raised by as much as 195 percent—a triple increase. (Auto Club, rate for a married female principal operator, under age 19.) I have just learned that the "award" for the highest rate increase in a single risk category should go not to the Auto Club, but to Citizens Insurance, which raised its rates by as much as 327 percent—more than four times as much as the policyholder would have paid before the law went into effect (married female, principal operator, under age 18).

The State Insurance Bureau's standard advice to shocked insurance buyers has been to "shop around" for the best rate, but even the most careful comparison shopper has little to choose when confronted with these kinds of whopping increases. For example, other well-known companies raised their rates for the same group of women as follows: State Farm, 160 percent; Auto Owners, 103 percent, Trans-America, 140 percent, and Allstate, 242 percent.

The Michigan Insurance Bureau has done nothing to correct or even expose the enormity of the situation. In the meantime, Michigan is being "pointed to with pride" as one of the 4 states that have set the example for H.R. 100 now being promoted in Congress as a "women's rights" or a "civil rights" bill.

You should know that I would not have discovered all of this without asking a lot of persistent questions of the Michigan Insurance Bureau. Their new official report "A Year of Change—the Essential Insurance Act in 1981" does discuss a few beneficial changes made by the comprehensive law, but the few tables and pages that discuss the elimination of sex and marital status in the setting of rates tend to obscure the truth by disguising it in a puzzle of unfamiliar insurance terms and numbers.

For example, the first challenge was to interpret Exhibit V of the Essential Insurance Report, which displays the rate changes only in terms of "relatively", an insurance term which compares the risk classification of young drivers to that of adult drivers.

According to an official at the Insurance Bureau, basic classes of adult drivers are assigned a relatively of 1.00. A group of young drivers with a relativity factor of 2.00 are considered to be twice as likely to have accidents, based on statistical probabilities. If the relativity factor of a group of single females was increased by a particular company from 2.00 to 2.95 under the new sex-neutral law, that translates into a

percentage increase of 47 percent. I used a calculator to figure and write in the rest of the percentage changes, as shown on the enclosed copy of Exhibit V.

But the most interesting thing about the Insurance Bureau's Report is an item that's missing. Exhibit V displays only 3 tables—instead of 4. The table of rate increases for young married females isn't there! When I inquired as to why the table was missing, I was told that there was "no room", and that none had been prepared. How strange it is that the missing table was the one that would have shown the steepest increases caused by the sex-neutralization law!

I decided to use my calculator and "clues" from the Insurance Bureau to prepare my own table, and the results are truly shocking. (See separate table enclosed.) As you can see, an entire class of women has been arbitrarily denied the lower insurance rates that would otherwise be theirs.

Instead of being treated as individuals in a low-risk group, these young women have been thrown into a much larger "unisex" category which forces them to subsidize the claims of high-risk drivers. This new system constitutes a new form of arbitrary sex discrimination, which does not allow the insurance companies to treat women as female individuals. How can this possibly be considered "fair" or "equitable"?

Of course, the insurance companies don't want to draw attention to their soaring rates, and they are well aware that prior approval of rates by the Commissioner of Insurance is no longer required. On the other hand, the Insurance Bureau seems to have an ax to grind of its own. A June 4, 1982 letter from Deputy Commissioner of Insurance Jean K. Carlson comes to the amazing conclusion that the first year (of the Essential Insurance Act) "indicate(s) a more positive atmosphere for consumers, and a distant lack of the negative impact predicted by several representatives of the insurance industry."

Between the insurance companies who are looking out for their balance sheets, and the State Bureau's false pride in the new law—not to mention the feminists who sponsored the law and have betrayed the best interests of women time and time again, who is there to speak for the interest of the women who must pay the price for this foolish experiment?

The few words in Michigan's law that have caused the problem can be repealed, but that would be impossible if S. 372 passes in Congress. (Passage of a federal Equal Rights Amendment, which would also sex-neutralize all state and federal insurance laws, would have the same effect—only worse.)

Proponents of S. 372 claim that the law would not take away the right of states to regulate insurance. However, the bill also says that state regulations must be "consistent" with the new federal law. What possible argument can be made for transferring regulation authority over insurance matters to the federal level?

The bill would create a new area of responsibility within the Department of Justice, and a new area of jurisdiction for the already over-burdened U.S. District Courts. Alice M. Rivlin, Director of the Congressional Budget Office has predicted that costs for additional staff, overhead, and other administrative expenses at the Department of Justice would be a minimum of approximately \$200,000 in fiscal year 1983, and \$400,000 in each fiscal year thereafter. (Senate Report No. 97-671, pp. 19-20.) Must we pay such a high price for this dubious law?

Speaking of excessive federal regulation, S. 372 would take away the lower life insurance rates that women are entitled to by virtue of the fact that women live longer, and the impact would be felt in every state of the union. Feminist sponsors of the bill seem unconcerned about this.

Much of the misguided support for S. 372 comes from the false hope that higher costs for women in the area of life and auto insurance would be offset by lower health insurance costs and improved pension benefits. But the President's Commission on Pension Policy says that only 39 percent of all women in the work force are covered by pension plans, and 95 percent of those already have unisex pension plans and benefits. (Most employer-funded pension plans can use the advantage of a group rate to blend the actuarial differences between males and females.) Therefore, a Congressional mandate for unisex pensions would advantage only 5 of 39 percent, or 2 percent of working women, and wives not in the labor force would not benefit at all.

It would be a colossal mistake for Congress to pass a massive piece of legislation that would benefit only 2 percent of the women, while imposing higher life and auto insurance rates on the other 98 percent of the women. How high is high?

According to a survey done by the Insurance Services Office in Washington, D.C., unisex auto insurance tables would raise rates for a 23 year-old single woman in Hartford, Connecticut by as much as \$600; in Newark, New Jersey, by about \$700

more per year; and in Philadelphia by \$800 more per year. (Copy of complete survey results provided on request.)

When life insurance is priced separately for men and women, rates for women are 15 to 25 percent less than for men because actuarial tables clearly show that women tend to live 3 to 8 years longer than men do. According to Barbara J. Lautzenheiser, Senior Vice President of Phoenix Mutual Life Insurance Company of Hartford, a 25 year-old non-smoking woman would have to pay \$150 more for a one-year \$50,000 term policy than she now would pay. A 35 year-old would pay \$350 more. Rate increases in higher age brackets would be even steeper. (See Testimony before House Subcommittee on Commerce, Transportation and Tourism, February 24, 1983.)

Please remember that unlike most pensions and health insurance plans, auto and life insurance policies are usually purchased by individuals without the advantage of company group rates. Therefore, there would be no "trade-off" that could justify the staggering costs in auto and life insurance that would be imposed on women in the name of "women's rights".

There are other ways to deal with reported problems that some women have had with pensions. For example, constructive pension reforms could include the recognition of public and private pensions as a legitimate property right of ex-spouses and surviving spouses. Bills to lower the pension accrual eligibility age to 21, rather than age 25, and to increase pension coverage for maternity leave might be a good idea, provided that they do not cause excessive costs or government interference in free enterprise.

The point is that it is not necessary to endorse the unisex pension concept, and extend that to call for the total sex-neutralization of all forms of insurance. Edwin L. Harper, Assistant to the President for Policy Development, has advised me that, contrary to some reports, the President and the administration "has (have) not proposed sex neutralization of insurance laws generally."

The next logical, inevitable step in this ill-advised process would be to forbid insurance companies from taking other legitimate characteristics—such as age, condition of health, or marital status—into consideration in the setting of insurance rates. Indeed, opponents of a risk classification system that is based on objective, reliable statistics have already targeted age and marital status as the next factors to be eliminated.

Once the determination is made that insurance rates need have no relation to factual statistics, then it would be only a matter of time before all kinds of policyholders are forced to subsidize the high risks of others, and the true concept of equity in insurance would be totally destroyed.

In order to maintain true equity between different classes of policyholders, each insured person should contribute according to the risk which he or she transfers to the common fund. If one group is allowed to pay less than a fair share based on risk, it necessitates an overcharge against other groups in order to keep the common fund solvent and enable it to meet all claims. This is exactly what has happened in Michigan.

The argument has been made that it is a violation of an individual's "civil rights" to be treated as part of a group in the setting of insurance rates. But if a person makes auto insurance payments all of his or her life, but never has an accident, does that mean that the person's "civil rights"—as an accident-free individual—have been violated? Is he entitled to a refund? Of course not!

It is possible to violate someone's civil rights in the setting of insurance rates, particularly if an individual is thrown into a category that is so large it doesn't reflect one's own personal characteristics that most accurately determine predictable risk. Again that is exactly what has happened to young women in Michigan who are being forced to pay higher rates than they rightfully should pay.

I hope that you will take the time to consider this information about Michigan's experience with this kind of law, and vote no on S. 372, which would compound Michigan's mistake and impose it on all the states.

Please remember—the so-called "women's rights" advocates do not speak for the majority of women on this issue and many others.

INITIAL IMPACTS OF ELIMINATION OF SEX AND MARITAL STATUS

(Pre- and Post-essential insurance young driver factors applied to base rates—married females)

	Age 16		Age 17		Age 18		Age 19		Age 20		Age 21-22		Age 23-24	
	1980	Jan. 1, 1981	1980	Jan. 1, 1981	1980	Jan. 1, 1981	1980	Jan. 1, 1981	1980	Jan. 1, 1981	1980	Jan. 1, 1981	1980	Jan. 1, 1981
Principal operators:														
Auto Club.....	+195	1	2.95	1	2.95	1	2.95	1	2.55	1	2.05	1	1.65	1
State Farm.....	+160	1	2.60	1	2.60	1	2.60	1	2.60	1	1.90	1	1.90	1
Auto Owners.....	+103	1	2.03	1	2.03	1	2.03	1	1.95	1	1.41	1	1.20	1
Citizens.....	+327	1	4.27	1	4.27	1	3.85	1	3.85	1	1.79	1	1.00	1
TransAmerica.....	+140	1	2.40	1	2.05	1	1.80	1	1.65	1	1.25	1	1.25	1
Allstate.....	+242	1	2.97	1	2.97	1	2.52	1	2.52	1	2.07	1	1.92	1
Occasional operators:														
Auto Club.....	+100	1	2.00	1	2.00	1	1.80	1	1.80	1	1.65	1	1.45	1
State Farm.....	+85	1	1.85	1	1.85	1	1.85	1	1.85	1	1.65	1	1.45	1
Auto Owners.....	+54	1	1.54	1	1.54	1	1.36	1	1.36	1	1.15	1	1.08	1
Citizens.....	+98	1	1.98	1	1.98	1	1.71	1	1.71	1	1.18	1	1.00	1
TransAmerica.....	+70	1	1.70	1	1.50	1	1.30	1	1.20	1	1.05	1	1.05	1
Allstate.....	+242	1	2.97	1	2.97	1	2.52	1	2.52	1	2.07	1	1.92	1

Note.—This is the table that was omitted from the report "A Year of Change—The Essential Insurance Act in 1981," published by the Michigan Insurance Bureau—1982. It shows the steepest increases in auto insurance rates under the new law.

EXHIBIT V.—INITIAL IMPACTS OF ELIMINATION OF SEX AND MARITAL STATUS

(Pre- and Post-essential insurance young driver factors applied to base rates—married females)

	Percent differ- ence	Age 16		Age 17		Percent differ- ence	Age 18		Age 19		Percent differ- ence	Age 20		Age 21-22		Percent differ- ence	Age 23-24	
		1980	Jan. 1, 1981	1980	Jan. 1, 1981		1980	Jan. 1, 1981	1980	Jan. 1, 1981		1980	Jan. 1, 1981	1980	Jan. 1, 1981		1980	Jan. 1, 1981
SINGLE FEMALES																		
Principal operators:																		
Auto Club.....	+47	2.00	2.95	2.00	2.95	+47	2.00	2.95	2.00	2.55	+27	2.00	2.55	1.70	2.05	1	1.70	1.65
State Farm.....	+67	1.55	2.60	1.55	2.60	+67	1.55	2.60	1.55	2.60	+68	1.55	2.60	1.35	1.90	+26	1.35	1.70
Auto Owners.....	+50	1.35	2.03	1.35	2.03	+50	1.35	2.03	1.35	1.95	+44	1.35	1.95	1.00	1.41	+2	1.00	1.20
Citizens.....	+127	1.88	4.27	1.88	4.27	+127	1.88	4.27	1.79	3.85	+115	1.79	3.85	1.65	1.79	.....	1.00	1.00
TransAmerica																		
Allstate.....	+13	2.12	2.40	2.12	2.40	3	2.12	2.05	1.82	1.80	1	1.82	1.65	1.00	1.25	+25	1.00	1.25
Occasional operators:																		
Auto Club.....	+84	1.85	3.42	1.85	2.97	+60	1.85	2.97	1.85	2.52	+36	1.85	2.52	1.58	2.07	+21	1.58	1.92
State Farm.....	+25	1.60	2.00	1.60	2.00	+25	1.60	2.00	1.60	1.80	+12	1.60	1.80	1.30	1.65	+11	1.30	1.45
Auto Owners.....	+19	1.55	1.85	1.55	1.85	+19	1.55	1.85	1.55	1.85	+19	1.55	1.85	1.35	1.65	+7	1.35	1.45
Citizens.....	+14	1.35	1.54	1.35	1.54	+14	1.35	1.54	1.35	1.36	.....	1.35	1.36	1.00	1.15	.....	1.00	1.08
TransAmerica.....	+37	1.44	1.98	1.44	1.98	+37	1.44	1.98	1.35	1.71	+27	1.35	1.71	1.24	.....	1.18	1.00	1.00
Allstate.....	-24	2.12	1.70	2.12	1.70	-29	2.12	1.50	1.82	1.30	-34	1.82	1.20	1.00	1.05	.....	1.00	1.05
	+62	1.51	2.45	1.51	2.32	+54	1.51	2.32	1.51	2.12	+40	1.51	2.12	1.41	2.07	+36	1.41	1.92
SINGLE MALES																		
Principal operators:																		
Auto Club.....	-13	3.40	2.95	3.40	2.95	-13	3.40	2.95	3.40	2.55	-25	3.40	2.55	2.60	2.05	-36	2.60	1.65
State Farm.....	-28	3.65	2.60	3.65	2.60	-28	3.65	2.60	3.65	2.60	-29	3.65	2.60	2.80	1.90	-39	2.80	1.70
Auto Owners.....	-23	2.64	2.03	2.64	2.03	-23	2.64	2.03	2.64	1.95	-26	2.64	1.95	1.80	1.41	-33	1.80	1.20
Citizens.....	+43	2.99	4.27	2.99	4.27	+42	2.99	4.27	2.56	3.85	+50	2.56	3.85	2.56	1.79	.....	1.00	1.00
TransAmerica.....	-37	3.82	2.40	3.82	2.40	-46	3.82	2.05	3.41	1.80	-52	3.41	1.66	3.00	1.25	-58	3.00	1.25
Allstate.....	+6	3.20	3.42	3.20	2.97	-7	3.20	2.97	3.20	2.52	-21	3.20	2.52	2.36	2.07	-19	2.36	1.92
Occasional operators:																		
Auto Club.....	-11	2.25	2.00	2.25	2.00	-11	2.25	2.00	2.25	1.80	-2	2.25	1.80	1.60	1.65	-9	1.60	1.45
State Farm.....	-19	2.30	1.85	2.30	1.85	-19	2.30	1.85	2.30	1.85	-19	2.30	1.85	1.80	1.65	-19	1.80	1.45
Auto Owners.....	-14	1.80	1.54	1.80	1.54	-14	1.80	1.54	1.80	1.36	-24	1.80	1.36	1.48	1.15	-27	1.48	1.08
Citizens.....	-2	1.93	1.98	1.93	1.98	-2	1.93	1.98	1.83	1.71	-6	1.83	1.71	1.64	1.18	-39	1.00	1.00
TransAmerica.....	-16	2.88	2.40	2.88	2.40	-29	2.88	2.05	2.59	1.80	-36	2.59	1.65	2.06	1.25	-39	2.06	1.25
Allstate.....	+21	2.01	2.45	2.01	2.32	+15	2.01	.327	2.01	2.12	+15	2.01	2.12	1.53	2.07	+25	1.53	1.92

EXHIBIT V.—INITIAL IMPACTS OF ELIMINATION OF SEX AND MARITAL STATUS—Continued

[Pre- and Post-essential insurance young driver factors applied to base rates—married females]

	Percent differ- ence	Age 16		Age 17		Percent differ- ence	Age 18		Age 19		Percent differ- ence	Age 20		Age 21-22		Percent differ- ence	Age 23-24	
		1980	Jan. 1, 1981	1980	Jan. 1, 1981		1980	Jan. 1, 1981	1980	Jan. 1, 1981		1980	Jan. 1, 1981	1980	Jan. 1, 1981		1980	Jan. 1, 1981
MARRIED MALES																		
Principal operators:																		
Auto Club.....	+51	1.95	2.95	1.95	2.95	+51	1.95	2.95	1.95	2.55	+31	1.95	2.55	1.65	2.05	.....	1.65	1.65
State Farm.....	+40	1.85	2.60	1.85	2.60	+40	1.85	2.60	1.85	2.60	+40	1.85	2.60	1.50	1.90	+46	1.30	1.90
Auto Owners.....	+23	1.65	2.03	1.65	2.03	+23	1.65	2.03	1.65	1.95	+18	1.65	1.95	1.65	1.41	-27	1.65	1.20
Citizens.....	+150	1.71	4.27	1.71	4.27	+150	1.71	4.27	1.71	3.85	+125	1.71	3.85	1.52	1.79	.....	1.00	1.00
TransAmerica.....	+7	2.23	2.40	2.23	2.40	-8	2.23	2.05	2.12	1.80	-22	2.12	1.65	1.82	1.25	-31	1.82	1.25
Allstate.....	+55	2.20	3.42	2.20	2.97	+35	2.20	2.97	2.20	2.52	+14	2.20	2.52	1.71	2.07	+12	1.71	1.92
Occasional operators:																		
Auto Club.....	+2	1.95	2.00	1.95	2.00	+2	1.95	2.00	1.95	1.80	+2	1.95	1.80	1.65	1.65	-12	1.65	1.45
State Farm.....	-6	1.85	1.85	1.85	1.85	.....	1.85	1.85	1.85	1.85	.....	1.85	1.85	1.50	1.65	+11	1.30	1.45
Auto Owners.....	-6	1.65	1.54	1.65	1.54	-6	1.65	1.54	1.65	1.36	-17	1.65	1.36	1.65	1.15	-34	1.65	1.08
Citizens.....	+16	1.71	1.98	1.71	1.98	+16	1.71	1.98	1.71	1.71	.....	1.71	1.71	1.52	1.18	-42	1.00	1.00
TransAmerica.....	-24	2.23	1.70	2.23	1.70	-33	2.23	1.50	2.12	1.30	-43	2.12	1.20	1.82	1.05	-42	1.82	1.05
Allstate.....	+55	2.20	3.42	2.20	2.97	+35	2.20	2.97	2.20	2.52	+14	2.20	2.52	2.20	2.07	-11	2.20	1.92

Notes: (1) Factor are approximations based on company filings. For those companies with factors that differ by coverage, only a simple average is used.

(2) Allstate's January 1, 1981, factors are based on years of driving experience, not age. They have been converted to age group factors by assuming that a driver with 0-1 years of experience is 16.

THE WHITE HOUSE,
Washington, February 28, 1983.

Ms. ELAINE DONNELLY,
Livonia, Mich.

DEAR MS. DONNELLY. The President has asked me to respond to your telegram of January 20 in which you expressed your concern that the Administration was pursuing the sex-neutralization of insurance laws.

In the State of the Union address, the President promised to "take action to remedy inequities in pensions". In these remarks, the President was referring solely to employer pension plans. The Administration has not proposed sex-neutralization of insurance laws generally. We agree that equity in insurance is a complicated issue that deserves careful study.

There are a number of pending legislative proposals that do call for sex-neutrality in all forms of insurance. While we are generally aware of the possible impact that these proposals would have on both consumers and the insurance industry, it is helpful to have specific information on the impact of this type legislation in Michigan.

Thank you for sharing your views with me. I hope you will continue to share your thoughts on the policies of this Administration with me in the months and years ahead.

Sincerely,

EDWIN L. HARPER,
Assistant to the President for Policy Development.

[From the Alpena News, Dec. 31, 1982]

NEW LAW WILL BOOST AUTO INSURANCE RATES

(By Bruce Maxwell)

A new insurance law which some local agents criticize as "social engineering" will lead to significantly higher automobile insurance rates for nearly all people when it takes effect Jan. 1.

Married women under age 25 will experience a dramatic rate hike, and single women under age 25 also will get a hefty rate hike. The rest of the adult population additionally will find their auto insurance rates higher. The only group whose rates will lower is single males under the age of 25, the group which statistically has the greatest number and most serious car accidents.

That's an assessment by several local insurance agents of the impact of the Essential Insurance Act, which was signed into law more than one year ago and goes into effect Jan. 1.

The auto insurance rates will change because insurance companies will no longer be able to use the sex or marital status of a potential purchaser in determining rate status. In the past, single males under age 25 were charged the higher rates, married males in the same age group were next highest, single females in the age group were next highest, and married females of any age were considered adults and thus received lower rates than their unmarried counterparts.

The rates were based on classification criterion which statistically determined how much risk each person represented, and sex and marital status were two important factors in that classification.

The elimination of sex and marital status in rate determination is merely one part of the complicated Essential Insurance Act, whose full effects probably won't be known for two or three years, according to local insurance agents.

Other portions of the law are designed to decrease the number of people who can be denied insurance, eliminate the practice of "redlining" in homeowners insurance, and changes no-fault auto insurance to make it easier to collect insurance money in accidents, particularly hit-and-run accidents.

The bill is designed to assure that insurance coverage is available to all persons at equitable rates, a situation which proponents of the measure say did not always occur under the old law. The bill was supported by the Democratic leadership of the state legislature, union groups and the Statewide Coalition Against Redlining. It was opposed by most segments of the insurance industry, with many agents complaining about governmental interference in their business.

One controversial portion of the new law requires that insurance companies provide auto and home policies for some people who previously couldn't buy regular insurance or had to buy it in "high-risk pools" because they fit a category which carried too high of a risk. William Zeller, president of the Zeller Agency said this

new provision will primarily benefit residents of metropolitan areas. Thomas L. Skiba, president of Skiba Insurance Services, said less than one percent of people in this area have trouble getting homeowners insurance.

The so-called "take all comers" approach also is designed to eliminate redlining, where insurance companies refused to insure homes in high-risk sections of certain cities.

The no-fault auto insurance law which went into effect in 1973 also is changed in several respects by the new law, most notably in making it easier to collect insurance money in auto accidents. This part of the law took effect March 1, 1980.

If you had limited coverage previously, it only paid for damage to your vehicle if you were totally free from fault. Now, however, it will pay if you were 50 percent at fault or less. Broad coverage, which pays for damage to your vehicle regardless of who caused the accident, previously paid your deductible amount only if you were totally free from fault. Now the deductible is paid if you were 50 percent at fault or less.

Coverage in hit-and-run accidents also is changing. Under the old law, you were covered in such accidents only if you had the more-expensive broad coverage. Now most persons with limited coverage also will be able to collect for damage to their vehicle in hit-and-runs.

In the end, the law merely shifts the burden of higher premiums to new people, all in the course of its attempt to make coverage available to all people at equitable rates. All local insurance agents agree it will be quite some time, possibly several years, before the full effect of the law become known and rates become firm.

But they agree one thing is sure: the new law will cost the vast majority of area residents more money.

Effect of S. 372—1983 on auto insurance premiums for women drivers.

CONNECTICUT

	Premium as of Jan. 1, 1983	Unisex	Difference
HARTFORD			
19-year-old occasional operator:			
Company A.....	\$394	\$537	+\$143
Company B.....	679	844	+ 165
Company C.....	1,087	1,344	+ 257
23-year-old principal operator:			
Company A.....	451	689	+ 238
Company B.....	669	822	+ 153
Company C.....	982	1,560	+ 578
BRIDGEPORT			
19-year-old occasional operator:			
Company A.....	378	516	+ 138
Company B.....	629	781	+ 152
Company C.....	965	1,192	+ 227
23-year-old principal operator:			
Company A.....	433	662	+ 229
Company B.....	619	762	+ 143
Company C.....	873	1,383	+ 510

Effect of S. 2204 on auto insurance premiums for women drivers.

NEW JERSEY

	Premium as of Jan. 1, 1983	Unisex	Difference
TRENTON			
19-year-old occasional operator:			
Company A.....	\$794	\$1,065	+\$271
Company B.....	686	806	+ 120
Company C.....	709	846	+ 137
23-year-old principal operator:			
Company A.....	906	1,147	+ 241

NEW JERSEY—Continued

	Premium as of Jan. 1, 1983	Unisex	Difference
Company B.....	580	790	+ 210
Company C.....	604	884	+ 280
NEWARK			
19-year-old occasional operator:			
Company A.....	1,184	1,593	+ 409
Company B.....	1,502	1,793	+ 291
Company C.....	1,526	1,855	+ 329
23-year-old principal operator:			
Company A.....	1,355	1,716	+ 361
Company B.....	1,249	1,756	+ 507
Company C.....	1,273	1,947	+ 674

Effect of S. 2204 on auto insurance premiums for women drivers.

PENNSYLVANIA

	Premium as of Jan. 1, 1983	Unisex	Difference
HARRISBURG			
19-year-old occasional operator:			
Company A.....	\$467	\$595	+ \$128
Company B.....	404	508	+ 104
Company C.....	710	880	+ 170
23-year-old principal operator:			
Company A.....	535	713	+ 178
Company B.....	404	475	+ 71
Company C.....	579	928	+ 349
PHILADELPHIA			
19-year-old occasional operator:			
Company A.....	1,269	1,528	+ 319
Company B.....	962	1,208	+ 246
Company C.....	1,608	2,012	+ 404
23-year-old principal operator:			
Company A.....	1,399	1,854	+ 455
Company B.....	952	1,123	+ 171
Company C.....	1,298	2,126	+ 828

Note: Examples:

1. Single female—19 years old with no discounts or surcharges: Car—1980 Chevy Malibu. Coverage—bodily injury/property damage—\$50/100/25. Medical payments (PIP)—\$2,000 (basic). Uninsured motorists—basic limit. Comprehensive—\$50 deductible. Collision—\$200 deductible.
2. Single female—23 years old, drives to and from work. All other characteristics the same as Example 1.

The CHAIRMAN. Thank you.

We will go to Ms. Jackson.

Ms. JACKSON. Mr. Chairman and members of the committee, I am Metra Jackson, legislative aide in the Washington Bureau of the National Association for the Advancement of Colored People. I will give you a summary of the testimony that was submitted by Althea T. L. Simmons, director of the Washington Bureau, who could not appear here today.

I speak in behalf of the more than 1,800 branches and units of the association.

The NAACP supports the intent and purpose of S. 372. We agree that territorial classifications, otherwise known as redlining, a widespread practice in the insurance industry, has a disastrous

effect on blacks and other minorities in the enjoyment of property ownership, health services, and economic security.

There is ample evidence documenting this practice and its effects. People living in inner cities cannot get the homeowners' and auto insurance they need and want at a reasonable price. Over the past 9 years, extensive testimony has been presented to Congress on insurance redlining which shows that insurance redlining has been and continues to be a major obstacle to the attaining of decent housing by blacks.

Redlining is not confined to homeowners' insurance, but applies to other types as well. That is, auto and business risk insurance. The State Advisory Committee on the U.S. Commission on Civil Rights describes some of the methods used to cover up discriminatory practices. That report also cites data from the National Advisory Panel on Insurance, which showed that 30 percent of the residents and 40 percent of businessmen in poverty areas of cities have serious insurance problems. Fifteen percent of the homeowners and 14 percent of the businessmen said they had less insurance than they wanted.

Given the extent of the practices of discrimination, the failure of the States to solve it and the need for uniformity in eliminating discrimination, we welcome the introduction of S. 372 by Senator Packwood. We believe the provisions of this legislation are a step in the right direction.

Thank you, Mr. Chairman and members of the subcommittee, for affording us this opportunity to be heard.

[The statement follows:]

STATEMENT OF ALTHEA T. L. SIMMONS, DIRECTOR, WASHINGTON BUREAU, NAACP

Mr. Chairman and members of the Committee, I am Althea T. L. Simmons, Director of the Washington Bureau of the National Association for the Advancement of Colored People. I make this statement on behalf of the more than 1,800 local branches and youth units of the Association.

For nearly three-quarters of a century the NAACP has led the fight in this nation against discrimination that has denied equality of opportunity on the basis of race or color. It has as its objective the complete elimination of such discrimination in all aspects of America life. It is pleased, therefore, to join the sponsors of this bill in a common fight against the rampant discrimination that exists in the insurance industry and in support of the objectives of S. 372. We testified on this legislation in the 96th and 97th Congresses.

In a letter dated May 22, 1978, the Chairman of the Senate Subcommittee on Citizens and Shareholders rights and remedies made the following observations to the Chairman of the United States Commission on Civil Rights:

"In addition, American citizens who are members of racial and ethnic minorities frequently suffer more than other consumers from territorial classifications because they live in urban areas negatively targeted by the insurance industry.

"Further, occupational categories—both for underwriting and rating purposes—often operate to the particular disadvantage of minority groups. For example, some insurance companies consider unskilled manual laborers high risks for auto insurance, despite the lack of objective data showing that consumers practicing occupations in these categories have greater losses."

This letter appears in the report of a consultation sponsored by the Civil Rights Commission entitled, "Discrimination Against Minorities and Women in Pensions and Health, Life and Disability Insurance," p. 1241.

We agree with the chairman that "territorial classifications," otherwise known as redlining, have a disadvantageous effect on blacks and other minorities in the enjoyment of property ownership, health services and economic security.

"Redlining" in the insurance industry is a widespread practice. Herbert S. Deneberg, former insurance Commissioner of the State of Pennsylvania, one of the wit-

nesses making a presentation at the Civil Rights Commission consultation, testified that the problem was a long standing one about which the industry did little.

"Anybody who knows anything about it can tell you that people in center cities can't get the auto insurance and the homeowner's insurance they need and want. Often they can't get it at reasonable prices."

A recently published book on the bleak outlook for minority group children, "Small Futures," by Richard H. DeLone, contains the following relevant quotation on redlining:

"Even if mortgage money is technically available, inner city families have trouble getting owners insurance, which is often required to get a mortgage." p. 11

The footnote used to support this quotation is interesting:

"On insurance redlining and inadequacy of government attempts to compensate for it, see *Homeworker's Insurance in Detroit: A Study of Redlining Practices and Discriminatory Rates*, a study prepared by the Office of Detroit City Council President Carl Levin in 1976, Mimeo, undated." p. 212

City Council President Levin is now, we all know, a member of the Senate, representing the State of Michigan. His expertise and experience on this subject are known, as he testified at the hearings of the Subcommittee on Citizens and Shareholders Rights previously referred to. We hope this Subcommittee will avail itself of that expertise and experience in the course of Subcommittee consideration of this bill.

We also hope that the Subcommittee will study the extensive testimony on insurance redlining presented over the past seven years to the House and Senate Judiciary Committees on H.R. 5200 and S. 506 and predecessor bills, to amend the Fair Housing law. This testimony shows that insurance redlining has been and continues to be a major obstacle to the obtaining of decent housing by blacks. It is to be noted, Mr. Chairman that redlining is not confined to homeowner's insurance, but applies to other types, e.g., auto and business risk insurances.

As noted by Congressman Dingell when he introduced H.R. 100 in the 96th Congress, insurance discrimination, though widespread, is much more subtle than in previous years. A multi-state report of Advisory Committees to the United States Commission on Civil Rights ("Insurance Redlining: Fact nor Fiction," February, 1979, pp. 4-5) described some of the methods used to cover up discriminatory practices. Some, not all, are as follows:

Placing agents selectively in order to reduce the opportunity to secure business in certain areas;

Refusing, limiting, or varying insurance availability due to subjective evaluations by agents or by inspectors that certain areas are "deteriorating" or "changing";

Refusing, limiting, or varying insurance availability due to subjective perceptions of "adverse factors" such as the race of sex of an applicant or the racial composition of the geographic area in which the risk is located;

Requiring inspections in certain locations within a State but not within other locations;

Pricing insurance at such high levels that for all practical purposes it is unavailable;

Varying underwriting practices solely by zip code.

The report of these Advisory Committees cited data from the National Advisory panel on Insurance which showed that 30 percent of residents and 40 percent of businessmen in poverty areas of six cities had serious insurance problems; 15 percent of the homeowners and 14 percent of the businessmen said they had less insurance than they wanted.

Given the extent of the practices of discrimination, the failure of the states to solve it and the need for uniformity in eliminating discrimination, we welcomed the introduction of H.R. 100 by Representative Dingell.

We express our continuing preference for administrative remedies in the field of civil rights over judicial ones. This is evidenced by our support of the pending fair housing legislation and our effort over the years to obtain cease and desist authority for EEOC. We believe that the provisions of the bill presently being considered are a step in the right direction.

Thank you Mr. Chairman and members of the Subcommittee for affording us this opportunity to be heard.

The CHAIRMAN. Thank you.

Mr. Hunter.

Mr. HUNTER. Mr. Chairman and Senator Lautenberg, thank you for inviting me here. I am Robert Hunter, president of the Nation-

al Insurance Consumer Organization. Formerly I was Federal Insurance Administrator, acting as Administrator from 1974 to 1978. I am a casualty actuary with over 20 years of insurance experience.

The National Insurance Consumer Organization is pleased to support passage of this bill and to congratulate you, Senator, on your leadership in this area. It is time to enact this bill and end unfair discrimination in insurance. Insurance premiums last year totaled 12 percent of the disposable income in this country.

I have been asked to discuss property casualty insurance. On property casualty insurance, the bill would affect underwriting along racial lines that occurs in our cities, so-called "redlining," as well as less frequent gender and national origin underwriting. But the insurance industry itself, I believe, opposes these practices, arguing that there is no problem, and if they are correct, then the bill would only serve to stop future practices, and would have little impact now, and I think it should be enacted for that purpose.

The debate as respects property casualty insurance has focused on automobile insurance where gender classifications are used for young people in ways that are most peculiar. Among the peculiarities is that a female, once she marries, disappears from the system, and her husband's rates take over. In effect, she disappears, but her accidents do not. Her accidents and convictions are charged to her young husband's classification. The accidents of the parents and sisters of an unmarried young man are also charged to the young male classification. No wonder their record looks bad. Yours would, too, if everybody in your family's accidents were charged to your classification.

I submit that gender is not an accurate or fair predictor of accident propensity. I believe it is a surrogate for mileage, the real risk-related factor.

In February, in hearings on H.R. 100 on the House side, insurers put in two exhibits into the record which enabled us to make an examination of what would happen if mileage were introduced into auto insurance at the same time that gender were removed. That analysis is attached to my statement.¹ NICO has performed this analysis using standard actuarial techniques.

Our conclusion is that if mileage were used and gender removed, rates for young women would stay unchanged or would change only marginally. I want you to hear that again, Senator. If mileage were introduced at the same time that gender were removed, the rates for young women would not change or change only marginally.

The data presented by the insurers makes it clear that as the number of miles increases, the number of claims increases, as you would expect. If a young woman drove a few miles under a unisex mileage approach, her rate would actually drop. Even under unisex, if a young woman drove a lot of miles her rates would go up.

But the average young woman's rate would stay unchanged. So instead of an alleged \$700 million cost for young women around the country, if mileage were introduced simultaneously there would be little change in the rates for young women.

¹ The material has been retained in the committee files.

It is also clear from this study that the rates for adult women, however, would fall significantly, because adult women also drive less than their male counterparts. Thus, overall, women's rates would drop if unisex were adopted and mileage used in the rating of automobile insurance.

Today insurers have little or no reason to use variables like mileage since they can use inappropriate variables like gender in their place and pick up a lot of the variance. This should stop, and only you can do it. I remind you of the GAO quote you have already heard, that "most State insurance departments have unquestioningly accepted pricing systems that are convenient for insurance companies rather than effectively protecting the legal rights of their citizens."

The GAO concluded that "Uniform remedies to deficiencies in the current classification system will probably have to come about through Federal legislation."

Four years later, NICO echoes this call for action.

I appreciate the opportunity to speak to you today.

[The statement follows:]

STATEMENT OF J. ROBERT HUNTER, PRESIDENT, NATIONAL INSURANCE CONSUMER ORGANIZATION

Good morning.

My name is Robert Hunter. I am President of the National Insurance Consumer Organization (NICO). I have worked in insurance for over twenty years. For ten years, I was in the private sector, as a supervisory actuary in charge of setting rates for auto insurance for the largest rating bureau, representing hundreds of insurance companies.

I spent ten years in the federal government, in the Federal Insurance Administration. I served as Administrator under Presidents Ford and Carter.

I organized NICO in 1980.

I am pleased to represent consumers of insurance and consumers generally in support of abolition of gender-based underwriting and classification practices of insurance companies. These practices are in error both morally, from a civil rights view point, and actuarially, since they fail such major tests of soundness as homogeneity (that is, similar loss expectation) and public acceptability.

Auto insurance is an area where use of gender-based criteria are particularly inappropriate. Gender is not an important nor an accurate predictor of loss expectation. Use of gender is a more important way than causal factors such as mileage and driving record, reduces incentives for safer driving.

In fact, gender is a surrogate for mileage. If insurance companies would couple adaptation of mileage rating with abolition of gender, the premiums for young women would not rise by \$700 million as the insurers have alleged, but would stay the same. But, premiums for women over age 25 would drop by about 25 percent. These figures are derived directly from exhibits put into the record of hearings on H.R. 100 by the insurance companies themselves.

Thus, women's premiums would fall if mileage—a good predictor of risk—were used in lieu of gender—a poor predictor.

Congress should enact H.R. 100 and S. 372 at once. Allowing continued use of unfair criteria to mask truly risk-related criteria is both immoral and a disincentive to safety.

Thank you.

The CHAIRMAN. Mr. Hunter, let me ask you this, if mileage was taken into effect at the same time that we went to gender-neutral tables, young women would have no increase in insurance rates?

Mr. HUNTER. Their rates would stay roughly the same, that is right.

The CHAIRMAN. I am curious. Ms. Donnelly, would you comment on that?

Ms. DONNELLY. I would be happy to. Again, I do not speak for the insurance company.

The CHAIRMAN. I understand that. Nor does Mr. Hunter, I can assure you.

Ms. DONNELLY. I do have some information that was provided in response to questions raised at previous hearings, and I will read a very short sentence here. It says:

While available evidence does indicate that females on the average do drive fewer miles than males, a valid adjustment for these different driving habits does not alter the results. Even if the female driving pattern were equivalent to males', the male accident rate would still be 30 percent higher than that of females.

There is also a table attached here which does take into account the mileage factor. It shows that even when mileage is taken into consideration the accident rate for young men is significantly higher than that of females. That is from your own previous record.

Therefore, mileage would not matter, and it did not matter in Michigan, either.

The CHAIRMAN. Mr. Hunter, do you want to comment?

Mr. HUNTER. I would like to comment. First of all, I have a study that is subject to analysis. I would welcome any analysis of it. I am sure you will receive analysis. I believe my analysis is accurate and actuarially sound. So rather than just talk about it I would welcome comments, and I would be happy to comment.

I would like to comment on the crisis that is going on in Michigan that nobody ever heard of before today, and point out that again that is subject to analysis. I would encourage you strongly, sir, to contact the insurance departments of the four States that have moved to unisex rating—Massachusetts, Hawaii, North Carolina, and Michigan—and get their input on what is really happening in their States.

Ms. DONNELLY. May I comment on that?

The CHAIRMAN. Go right ahead.

Senator LAUTENBERG. I think we need two microphones.

Ms. DONNELLY. Yes. I think the State insurance bureau has absolutely abrogated its responsibility to the consumers of Michigan. I have a copy of a letter here from Jean K. Carlson, deputy commissioner of insurance in Michigan, in which she claims:

That under this new law, in the first year, the activities of the first year indicate a more positive atmosphere for consumers and a distinct lack of the negative impact predicted by several representatives of the insurance companies.

And then they hide the facts in tables that show only the relativity factors, not percentage increases, and only in the most vague terms possible do they hint that rates for young women have gone up 127 percent, very quietly. I had to dig this information out for myself 3 weeks ago.

I have talked to many young women in the State, especially young married women, who think they are the only ones who have been slapped with these kind of rate increases. They do not know who to blame, but the blame should lie with the so-called women's advocate groups, who have betrayed the best interests of women.

The insurance bureau is not doing its job, either. And by the way, its bias is in favor of the bill. It is no wonder they are not going to tell the bad news.

The CHAIRMAN. Let me ask you this, does the American Association of University Women betray the interest of women?

Ms. DONNELLY. I believe so, yes, on many different issues. They do not speak for the majority of women.

The CHAIRMAN. The National Federation of Business and Professional Women's Clubs, are by and large, a group of women in the work force with many of them independently owning their own businesses are they betraying the women's interests?

Ms. DONNELLY. On this issue they are totally ignoring the fact that only 5 percent of the 39 percent of women who have pensions will be affected by the possible benefit with regard to pensions, but that is only 2 percent of the women in this country. The other 98 percent of the women would have to pay the price in terms of higher auto and life insurance.

The CHAIRMAN. Basically what you are saying is, all these groups—Women's Equity Action League, National Council of Jewish Women—are all betraying the interest of women?

Ms. DONNELLY. When they say that the lower driving accident record of young women should not be taken into consideration in the setting of rates, yes, they are. I cannot make a general statement about everything those organizations do. That is not what I said.

The CHAIRMAN. No, on this subject.

Ms. DONNELLY. On this subject they are not representing certainly the best interests of the majority of women, and neither is the National Organization of Women, especially them.

The CHAIRMAN. Especially. The others are just bad.

But the National Organization of Women is terrible. I will try to get that emphasis roughly right.

Let me ask you this, Ms. Donnelly. Do you think in insurance women ought to be charged on their individual merits?

Ms. DONNELLY. Let us put it this way, Senator Packwood. If an individual who pays auto insurance premiums all through his or her life and they never have an accident, which means they are an accident-free individual, does that mean that their civil rights have been violated? Absolutely not, because no one can prove ahead of time that they will remain an accident-free individual.

I am not an actuary, but I understand how insurance works.

The CHAIRMAN. I will grant you that. But indeed, on that same basis, in life insurance nobody can judge every single person and say whether they are going to die. I am not trying to make the argument that you can take every single person, a person who has been a perfect driver from the time they were 16, if that is when you got your drivers license, until 50 and say they are not going to have an accident when they are 51.

Probably the likelihood is that they are less likely to have an accident than somebody who has had 15 or 20 accidents from the time they were 16 to 50. That is a fair generalization, is it not?

Ms. DONNELLY. I have no quarrel with that argument. I think driving records should be taken into consideration. I have no problem with that.

The CHAIRMAN. Do you think that women ought to be judged on their individual merits as far as—

Ms. DONNELLY. Yes.

The CHAIRMAN. You do?

Ms. DONNELLY. Yes. That is why the Michigan law is violating those individuals' civil rights.

The CHAIRMAN. Then they should not be weighted as a class. They should be judged individually. I am not going to argue with you at the moment about the Michigan law. Maybe the administration of it has unfairly classified people, rather than weighing them as individuals.

But you think that people should be weighed individually, rather than as a class?

Ms. DONNELLY. The No. 1 element of an individual's individuality, their personality, is their sex. You are either a man or a woman. A female person in Michigan is entitled to lower auto accident rates by virtue of the fact that her risk category costs less to insure, but her right to have lower rates has been violated.

The CHAIRMAN. Let me ask you. Do you think that that is the major factor that overwhelms any other single factor in classification for automobile insurance?

Ms. DONNELLY. I think it is an important one. There are others that are also important.

The CHAIRMAN. There are others that are more important, are there not? Driving record is one.

Ms. DONNELLY. The driving record is very important, yes.

The CHAIRMAN. On life insurance, whether or not you smoke for your entire life is more likely to determine your longevity than if you are male or female.

Ms. DONNELLY. Yes, I understand that is taken into consideration in the setting of rates.

The CHAIRMAN. I want to make sure that you and I agree, you believe that everyone, whether it is insurance or employment or otherwise, ought to be judged as an individual and not lumped into a class.

Ms. DONNELLY. That is right, Senator Packwood, and that is exactly what is not happening in Michigan, because the young female drivers are being denied the lower rates that they otherwise would have.

The CHAIRMAN. I cannot argue with you about Michigan. I am not familiar with Michigan.

But then you and I do agree that women and men should be judged as individuals for purposes of insurance, rather than classified as part of a group, male or female?

Ms. DONNELLY. It would be impossible to do that, because as I said, no one can guarantee that they will remain an accident-free individual all through their life.

The CHAIRMAN. No one can guarantee that if you classified them men or women. There is no guarantee of that.

Ms. DONNELLY. There is no guarantee of anything, Senator Packwood.

I do feel that equity in insurance requires that equal risks should have equal costs. Young women should not be penalized at the level they are being penalized in Michigan for the high accident

rate of young men. To me that is the essence of unfairness. It is inequity.

The CHAIRMAN. And all young women should get a lower rate, regardless of the differences among young women?

Ms. DONNELLY. They should not get a lower rate if they have had 20 accidents in 2 years.

The CHAIRMAN. Oh, then we are going to take into account some individual factors?

Ms. DONNELLY. But all other things being equal, they are entitled to a lower rate, yes.

Why are you trying to deny them that? I do not understand why people would try to deny women this benefit and claim this is a women's rights bill, something good for women, when it is not. It is turning the definition of equity on its head, Senator Packwood.

The CHAIRMAN. I just want to make sure that each 20 year old woman gets judged on her merits.

Ms. DONNELLY. She is not being so judged in Michigan because of a similar law, just like the one you are trying to pass.

The CHAIRMAN. Should she be judged on her merits?

Ms. DONNELLY. Yes, she should. She is not being so judged.

The CHAIRMAN. Then you and I agree, she ought to be judged on her merits.

Ms. DONNELLY. I guess it is all in the definition of equity.

The CHAIRMAN. I think it is all in the definition of merit.

Ms. DONNELLY. Merit is how you apply it.

The CHAIRMAN. Frank.

Senator LAUTENBERG. I understand in my short term in the Senate, Mr. Chairman, that relevancy is not important in terms of testimony or review, and I will take advantage of that, if I might, just to find out one thing from Ms. Donnelly.

We know from her definition who does not speak for the majority of women. We have heard those organizations outlined. Who does?

Ms. DONNELLY. No one can, Senator Lautenberg. No one can speak for all women, any more than any one person or group can speak for all men. That has been a fallacy for years.

Senator LAUTENBERG. Not every woman, but could we have enough people in this room to represent every individual opinion?

Ms. DONNELLY. I do not think so.

Senator LAUTENBERG. Is there not some point at which there is a confluence, a coordinated view of attitudes or positions?

Ms. DONNELLY. Let us put it this way. Just from this one hearing today, we have heard about insurance companies absorbing losses, we have heard about governments passing costs on to taxpayers, we have heard about employers. We have not heard word, until I am speaking here today, for the women for whom Judy Goldsmith said, well, it does not matter, this will just have to be absorbed, this is the cost of civil rights—the young women who are going to have to pay for this increase will learn to accept it.

Senator LAUTENBERG. I do not think that is what she said. I think what she said is there is a 1 percent increase in the unfunded liability, just to keep the record straight.

Ms. DONNELLY. No one is here except for me to talk about the young women who got these letters from the insurance company shortly after Christmas, 1980—

Senator LAUTENBERG. You just disqualified yourself as representing anybody. I don't want to get into a colloquy here about these definitions. I just must tell you that I am offended by the fact that you take a position and say you represent a given part of the community, the female community—

Ms. DONNELLY. No; I did not say that.

Senator LAUTENBERG [continuing]. And others do not.

Well then, you are speaking as an individual and your testimony ought to be considered on that basis.

Ms. DONNELLY. I am a representative citizen from a State where this law has already gone into effect, so I think my testimony should have some weight, at least I hope it will. What I am saying is that women who have gotten the higher insurance bills cannot pass the cost on to somebody else. The insurance companies just pass the costs on to the consumers. They really do not care.

I understand in Massachusetts they have made a killing on the insurance increases because of the Sex Neutralization Act in Massachusetts. Now, who is speaking for the consumer, the "little woman?"

Senator LAUTENBERG. I thought you said that the Michigan Insurance Commission—is that the right body?

Ms. DONNELLY. Yes.

Senator LAUTENBERG. I thought you almost implied it is being manipulated by the consumer. I am wondering who they ought to be controlled by.

Ms. DONNELLY. Oh, no, they are not being manipulated by the consumer. They are not at all looking out for the interests of consumers.

Senator LAUTENBERG. Look at your commentary, Ms. Donnelly. You say they are being dictated to, I think that was your terminology—by the consumer, and I just wonder—

Ms. DONNELLY. No, Senator Lautenberg. I am afraid you misunderstand me. They have a predisposition to favor the law. They are withholding the truth about the full effects of the law.

Senator LAUTENBERG. Favoring the consumer?

Ms. DONNELLY. They are not representing the interests of consumers. If they were, they would blow the whistle on the insurance companies in the State of Michigan and they would also call for a repeal of that section of the law that is causing these huge increases, and they are not doing that.

Senator LAUTENBERG. I do not understand something. Why, if this is such a windfall for the insurance companies, are not the insurance companies supporting it?

Ms. DONNELLY. That is a good question. I think if they were supporting it then everybody would scream and holler and call it a terrible law, and say that the insurance companies are trying to rip off women in this country.

Incidentally, when I referred to the "little woman," I meant as opposed to the "little guy," as the colloquial phrase is sometimes used. It is the woman that has to pay the bill that I am talking about here.

The CHAIRMAN. There are lobbyists who testified. Those were deep down double agents.

The insurance industry really does want it, but they do not dare say they want it for fear that they will appear greedy.

Ms. DONNELLY. That may be true. I think perhaps in Massachusetts they have made an awful lot of profit off of this. I suspect the same thing is going on in the State of Michigan.

I wish that we had an insurance bureau that would look into this and investigate it, but they are so biased in favor of the law they are calling it a success when in my view it certainly is not, and in the view of women who have to pay the price.

The CHAIRMAN. Excuse me, Frank.

Senator Lautenberg: No, no. I have heard enough. Thank you very much.

The CHAIRMAN. I do have one question, Ms. Donnelly. What is the Insurance Services Office you referred to in your testimony in your study? I thought we had seen every single study that exists, but I have not seen this one. I have not heard of this office.

Ms. DONNELLY. I believe their testimony will be presented in your April 25 hearing. I will refer you to them.

The CHAIRMAN. You said you would provide in your testimony complete survey results, provide it on request. We would like to have it, because we do not have it.

Ms. DONNELLY. You most certainly can. There are three pages of the survey attached to my testimony. If you want the entire set, then I am sure they will be glad to provide it.

The CHAIRMAN. Can you arrange to have them send it to us?

Ms. DONNELLY. Certainly.

The CHAIRMAN. Thank you. I appreciate it, folks. Thank you. No other questions. I appreciate it.

Next we will call: Ms. Barbara Mandel, Ms. Shirley Sandage, and Ms. Jamie Stern.

Thank you very much for waiting this long. I appreciate it. We ought to start with Ms. Mandel.

STATEMENT OF BARBARA MANDEL, PRESIDENT, NATIONAL COUNCIL OF JEWISH WOMEN

Ms. MANDEL. Mr. Chairman, Mr. Lautenberg.

I am speaking as president of the National Council of Jewish Women to express all of our strong support for S. 372, the Fair Practices in Insurance Act. NCJW members are committed to a broad program of education, service, and social action, which includes participation in 1,500 direct service projects.

The more than 100,000 members of NCJW strongly oppose the blatant discrimination against women established and perpetuated by the insurance industry. Today the female population makes up 52.6 percent of the work force and a significant number of these women are widowed, divorced, or single heads of household. It is imperative that discriminatory roadblocks are removed so that women can achieve independence and full responsibility for our own lives.

Today women assume work responsibilities and financial responsibilities equal to those of men. We do not wish to become wards of

the Federal Government, dependent on welfare assistance, food stamps, medicaid, or social security subsidies.

Building equity in insurance and equalizing benefits can help us achieve independence. We believe that in our free enterprise system the private sectors can, should, and must provide equally for both men and for women. Disability insurance is not readily available to women. Pension funding and benefit payments do not treat women equally as compared to men.

The U.S. Government cannot sanction any public policy which permits discrimination and then financially support this policy by supplementary social service programs. No industry in the United States has the right to discriminate against an individual because of sex. Each of us and you, the elected officials of our Government, has fought long and hard to abolish discrimination in all forms. We cannot continue rampant discrimination in the private sector. This sex discrimination prohibits women from assuming an inalienable right, the right to dignity, the right to self-respect, the right to provide for her own needs.

Let me just cite one targeted discrimination which affects women of all ages—health coverage. Most health insurance providers do not cover preventive medical treatment, which would include gynecological checkups necessary to detect many forms of female cancers. Women, young and old, are aware that preventive medical care is a good investment.

A recent study indicates that women have a lower morbidity rate than men, are absent from work less frequently than men, and their absences are of shorter duration than those of men. Preventive care reduces long-term costly illnesses and enables long-term independent functioning. Thus, to deny insurance coverage for women's specific needs is indeed a foolish policy.

Current laws state that public policy must be made without reference to race, sex, religion, or national origin. How, then, can we permit the insurance industry, which is charged with implementing civil rights laws, to continue sex-based discrimination?

Inequalities in policies are the direct results of a discriminatory process. Deliberate prejudice denies equal opportunities. Sex-based prejudice in this instance means denying a retired woman the right to fill her grocery sack as full as a retired man. This prejudice means that she has paid more, for a longer period of time, for less return, and therefore will need supplementary support services to fill that grocery sack.

Why should the Government assume that burden? What we are talking about is public policy and discrimination. Since this practice does not increase profits, why continue it?

The Government has been charged with the task of terminating any discriminatory practice. It must "correct and compensate for past and present discrimination and prevent discrimination from recurring in the future," as stated in the U.S. Commission on Civil Rights Report, January 1981. S. 372 addresses this serious problem as it exists in the insurance industry.

NCJW urges passage of this bill as one step toward the establishment of economic equity, a cause for which the organization has long advocated.

Thank you.

The CHAIRMAN. Thank you.
Ms. Sandage.

**STATEMENT OF SHIRLEY M. SANDAGE, EXECUTIVE DIRECTOR,
OLDER WOMEN'S LEAGUE**

Ms. SANDAGE. Good morning, Senator Packwood.

The CHAIRMAN. Take that microphone and pull it right over so everyone can hear you.

Ms. SANDAGE. All right.

My name is Shirley Sandage. I am executive director of the Older Women's League, a national membership organization for midlife and older women. OWL has chartered chapters in more than half of the States, and works for changes in public policy that will reduce the inequities older women face.

The CHAIRMAN. All these statements will be in the record, and we ask that all witnesses keep themselves within the 5-minute time period.

Ms. SANDAGE. We are especially pleased to have the opportunity to share with you our perspective on insurance discrimination, and to express our support for S. 372, the Fair Practices in Insurance Act. We are especially concerned about insurance discrimination on the basis of sex, particularly as this affects pensions and health insurance, and I will focus on these two areas in our statement.

I believe it may be most helpful to this committee to consider the issue of sex-based discrimination in pensions and annuities in the context of older women's economic status. Older women experience aging differently than do men. On the average, women are much poorer, and due to differences in marital status they tend to live alone.

In this country, income decreases with age, regardless of sex or race. Throughout adult life, however, there are dramatic differences between the incomes of men and women, and these differences certainly carry over into older age. Older women are disproportionately poor, making up 59 percent of those over age 65, but 73 percent of the elderly poor. Older minority women are especially, particularly vulnerable.

The median annual income of women over 65 in 1981 was \$4,757, or just \$400 above the official poverty level, and \$3,400 below the median annual income for men. These income figures are less shocking if you assume that the median man and the median woman are married and living on a combined income of nearly \$13,000.

However, for most women that is not the case. While three-fourths of older men are married and living with their spouses, only a little more than a third of older women are in similar circumstances. In 1981, more than 7.5 million elderly lived alone and 80 percent of them were women.

The economic security of older women theoretically rests on the three-legged stool of social security, pensions, and savings. But for older women, balance is precarious because at least one leg—pensions—has been sawed off. Fewer than one older woman in five receives a pension from any source, public or private, whether as a

dependent spouse or as a worker. When women do receive pensions, on average they are substantially lower than men's benefits.

There are many examples of sex-neutral provisions in current pension law that have a discriminatory impact on women and result in lower or no pension benefits. Age exclusions, vesting requirements, break in service provisions, lack of portability or pension fund insurance coverage, and pension plan integration apply equally both to men and women, but they disproportionately impact on women because of their different work patterns, occupational segregation and pay inequities.

Given this context, the use of sex-based actuarial tables that yield women lower pension benefits than men seems indefensible. This is especially true when over 85 percent of women are penalized because about 15 percent of women who reach age 65 live longer than men reaching that age. The passage of the Fair Practices In Insurance Act will not do away with all the inequities women face in public and private pension systems, but we believe it will significantly lessen a blatantly discriminatory practice by ensuring the same pension benefits to men and women with the same earnings record.

I would like to turn to the issue of health insurance. Access to affordable health insurance in this country comes primarily through employment, either as a worker or a worker's dependent. We have heard a great deal recently about the impact on many Americans of a sudden loss of health insurance coverage. Through unemployment, millions of workers and their dependents have lost both their jobs and their group health insurance.

Other Americans are also left out of health insurance coverage. They include many part-time workers, lower income self-employed and domestic workers. These positions are primarily filled by women and many include a disproportionate number of older women.

Especially vulnerable are homemakers. As medical dependents covered under their husband's group health insurance, they are denied access to affordable health care following a change in family status. Upon divorce, widowhood, or the retirement or attainment of medicare eligibility by the spouse, they are generally no longer eligible under the group plan.

As a result of marital disruption alone, an estimated 4 to 6 million displaced homemakers between the ages of 45 to 64 have found themselves cut loose from health insurance coverage.

The CHAIRMAN. I am going to have to ask you to conclude.

Ms. SANDAGE. Thank you. I will be happy to answer additional questions.

[The statement follows:]

STATEMENT OF SHIRLEY SANDAGE, EXECUTIVE DIRECTOR, OLDER WOMEN'S LEAGUE

Mr. Chairman, members of the Committee. I am Shirley Sandage, Executive Director of the Older Women's League, a national membership organization devoted exclusively to the concerns of midlife and older women. Founded a little more than two years ago at the White House Mini-Conference on Older Women, OWL has chartered chapters in more than half the states, and its 6,000 members work for changes in public policy that will reduce the inequities older women face.

Among the key items on the national agenda of the Older Women's League are pension equity and access to health insurance. For this reason, we are especially

pleased to have the opportunity to share with you our perspective on insurance discrimination, and to express our support for S. 372, the Fair Practices in Insurance Act, prohibiting discrimination based on race, color, religion, national origin, or sex. Currently such discriminatory practices may extend to all areas of insurance: automobile, property, and liability insurance; life, disability, and health insurance; pensions and annuities. Our members are especially concerned, however, about discrimination on the basis of sex, particularly as this affects pensions and health insurance, and it is on these two areas that our statement will focus.

PENSIONS

It may be most helpful to this committee to consider the issue of sex-based discrimination in pensions and annuities in the context of older women's economic status. Older women experience aging differently than men. On the whole, they are much poorer, and due to differences in marital status, tend to live alone.

From middle-age on, income decreases with advancing age, regardless of sex or race. At any adult age, however, there are dramatic differences between the incomes of men and women. Such differences certainly carry into and have very adverse effects in old age. When data on income and poverty is shown by race and sex, the special vulnerability of older minority women is particularly evident. Further, older women are disproportionately poor, making up 59 percent of those over age 65, but 73 percent of the elderly poor.

The median annual income of women over 65 in 1981 was \$4757, or just \$400 above the official poverty level, and \$3400 below the median annual income for men. (See tables at the end of this statement). These income figures are less shocking if you assume that the "median man" and "median woman" are married, and living on a combined income of nearly \$13,000. For most women, that is not the case. When marital status is examined, there are profound differences in the proportions of older men and women who are widowed or married. While 75 percent of all older men are married and living with their spouse, only a little more than a third of older women are in similar circumstances. In 1981, about 7.5 million elderly lived alone, of whom 6 million (80 percent) were women.

In theory, the economic security of older persons rests on the three-legged stool of Social Security, pensions, and savings. For most older women, balance is precarious because at least one leg—pensions—has been sawed off. This is true both for dependent spouses and for former participants in the paid labor force. The Pension Rights Center has documented that 10.5 percent of women over 65 received private pensions and annuities in 1981, compared to 27.7 percent of men over 65, and that the amount of these benefits was substantially lower (men—\$4152; women—\$2427). Available data indicates that fewer than one older woman in five receives a pension from any source, public or private, whether as a dependent spouse or as a paid worker.

There are numerous examples of sex-neutral provisions in current pension law that in practice have a discriminatory impact on women, and result in lower or no pension benefits. Age exclusions, vesting requirements, break-in-service provisions, lack of portability or pension fund insurance coverage, and pension plan integration apply both to men and to women, but disproportionately impact on women because of their differing work patterns, occupational segregation, and pay inequities. Given this context, the use of sex-based actuarial tables that yield women lower pension benefits than men seems indefensible, especially when over 85 percent of women are penalized because about 15 percent of women who reach age 65 live longer than men reaching that age. The passage of the Fair Practices in Insurance Act will not do away with all the inequities women face in public and private pension systems, but it will significantly lessen a blatantly discriminatory practice, by insuring the same pension benefits to men and women with the same earnings record.

HEALTH INSURANCE

For most persons in the United States, access to affordable health insurance comes through employment, either as a worker or a worker's dependent. In recent months, we have heard a great deal about the impact on many Americans of a sudden loss of health insurance coverage. With record-high unemployment, millions of workers and their dependents are no longer protected against the loss of income due to medical expenses, because they have lost both their jobs and the group health insurance provided through their employment.

Other Americans are also left out of health insurance coverage. They include many part-time workers (for example, many of those in retail sales jobs), lower-income self-employed (such as baby sitters and home health aides), and domestic

workers. All of these positions are filled primarily by women, and many include a disproportionate number of older women.

Especially vulnerable are homemakers. As "medical dependents" covered under their husband's group health insurance, they are denied access to affordable health care following a change in family status. Upon divorce, widowhood, or the retirement or attainment of Medicare eligibility by the spouse, they generally are no longer eligible under the group plan. As a result of marital disruption alone, an estimated 4 to 6 million displaced homemakers between the ages of 45 and 64 find themselves cut loose from health insurance coverage. The cost of individual health insurance for these women is very often prohibitive, and for many is unavailable at any price because of an adverse health history.

The Older Women's League believes that adequate and affordable health insurance for millions of midlife women is the most pressing health issue they face today. Because of this need, we have developed a model state health insurance rights bill that would give dependents of employee members the option to convert to individual coverage, of comparable cost and without interruption or exclusions, when their eligibility under the group policy ends due to severance of the family relationship or retirement. OWL members are now working with their state legislators for the passage of such bills.

For all of these women—homemakers, part-time workers, and uncovered workers—private health insurance based on prohibitively high rates that discriminate on the basis of sex consign them to no health care when they need it and to Russian roulette when they don't ("Will I make it to age 65 and Medicare eligibility before a major health problem puts me in debt for the rest of my life?").

As other witnesses have pointed out in this hearing, other less immutable characteristics could be used as the basis for assigning insurance risk. We hope variables such as family and health history, personal lifestyle (smoking, weight, etc.), occupation, driving record, and other characteristics over which individuals have a degree of personal control, will become the norm. One concern of the Older Women's League is that insurance companies may engage in an unwarranted cost shifting toward age, if they can no longer use sex-based statistics. In that case, older women would still experience insurance discrimination, not because they are women, but merely because they are older.

The use of gender as a basis for risk classification by the insurance industry has contributed to economic insecurity among midlife and older women. We commend you, Mr. Chairman, for your recognition of this injustice, and for your leadership in proposing an appropriate remedy. The Older Women's League urges this Committee to favorably report S. 372, and hopes that your colleagues will promptly act on the measure.

TABLE 1.—SELECTED DATA ON PERSONS AGE 65+: INCOME, POVERTY, MARITAL STATUS

(Total money income in 1981, by sex and age)

	Men	Women
Age:		
45 to 49.....	\$21,248	\$7,494
50 to 54.....	20,796	6,513
55 to 59.....	19,879	5,926
60 to 64.....	14,807	4,966
65 plus.....	8,173	4,757

Note: Poverty level in 1981 for a person living alone: \$4359.

Source: Census Bureau, Current Population Reports P-60, No. 134, table 10.

TABLE 2.—POVERTY RATES BY SEX AND RACE/HISPANIC ORIGIN FOR PERSONS AGE 65 OR OVER IN 1981

(In percent)

	Total	White	Black	Spanish origin
Men.....	10.5	9.0	32.3	23.6
Women.....	18.6	16.2	43.5	27.4

Note: Poverty rate in 1981 for persons 65 plus: 15.3 percent.

TABLE 3.—NUMBERS OF PERSONS AGE 65 OR OVER IN POVERTY IN 1981, BY SEX AND RACE/
HISPANIC ORIGIN

	Total	White	Black	Spanish origin
Men.....	1,080,000	787,000	272,000	60,000
Women.....	2,773,000	2,191,000	547,000	86,000

Source: P-60, No. 134, Table 17.

TABLE 4.—MARITAL STATUS OF PERSONS 65 PLUS IN 1981, BY SEX

[In percent]

	Men	Women
Status:		
Married.....	77	38
Widowed.....	13	51
Separated/divorced.....	6	5
Never married.....	4	6

TABLE 5.—MARITAL STATUS OF PERSONS OVER 65, BY SEX AND AGE

[In percent]

	65 to 74	75 plus
Widowed:		
Men.....	8	22
Women.....	40	68
Married:		
Men.....	81	70
Women.....	48	22

Source: P-20, No. 372, tables 1 and E.

The CHAIRMAN. Thank you. Your entire statement will be in the record.

Ms. Stern.

STATEMENT OF JAMIE STERN, ON BEHALF OF WOMEN IN CITY GOVERNMENT UNITED, ACCOMPANIED BY CHERYL POLLAK; AND PAUL BARTEL

Ms. STERN. Good morning. I am Jamie Stern. I am here today with Cheryl Pollak and Paul Bartel to talk about the New York City retirement system. We are counsel to more than 70,000 retired and working female members of the New York City pension system.

These women brought a pension discrimination suit against New York City in 1975 and in 1981 the Federal Court in New York held that their rights under title VII had been violated, both with respect to contributions and with respect to benefits.

Today New York City's pension plans use sex-based actuarial tables to provide unequal contribution rates and unequal benefits to male and female employees. It has been 5 years since the *Manhart* decision. It has been 2 years since the Federal court decision in *Wiggy*. And in all that time New York City has done not one thing to bring its retirement system into compliance with the law.

S. 372 clearly defines the obligation to provide nondiscriminatory pension benefits. It clearly defines the method by which discriminatory practices should be remedied, and it is needed to motivate public pension systems like New York City's to end their discriminatory pension practices.

Mayor Koch came here today to urge that section 4(c)(2), the provision that prohibits reducing benefits to comply with this act, not be applied to working New York City employees. This represents a modification of the position, as I understand it, that he took before the House, in which he asked that the provision not apply to any New York City employees.

His two basic points this morning were that the provision is unfair, it creates a windfall, and that it is too costly. We urge that this provision apply across the board. It is neither unfair nor does it create costs for New York City which are untenable for it.

First, section 4(c)(2) is entirely consistent with the existing anti-discrimination statutes. The Equal Pay Act expressly provides that wages not be decreased in order to achieve compliance with that act. If the Equal Pay Act does not create a windfall for victims of discrimination under its provisions, then your act creates no windfall either.

Similarly, under title VII numerous courts have awarded what Mayor Koch refers to as "topping off." Most recently, the Court of Appeals in the Ninth Circuit approved a plan of relief which awarded to male and female retired members of a public California retirement system equal benefits at the favored rates. According to that court, this was a just result under title VII.

That case involved only retirees, and the reason is that the California system equalized benefits by topping off for working employees in 1977, more than 5 years ago.

In addition, section 4(c)(2) is the only method of equalization which is consistent with the New York State constitution and the contract clause of the Federal Constitution. Under the New York State constitution, it is impermissible to reduce any retirement system member's benefits or to increase their contribution rate. There has been a steady stream of State court decisions for 25 years interpreting that provision, striking down amendments to plans which would reduce benefits or increase contribution rates.

So New York City cannot, consistent with the constitutional rights of its employees, adopt a weighted midpoint average as Mayor Koch suggested.

Mayor Koch said he would not reduce benefits for retired employees, and this is interesting because their rights under the constitution are no greater than those of active employees. A working woman who is 59 years old today and may retire in 3 or 4 or 5 years under Mayor Koch's proposal would get lower benefits than a woman who retired a week before this bill became effective.

The constitution applies to all members of the retirement system. You become a member 6 months after joining the New York City employment force. Therefore, the mayor's acknowledgment that retirees' benefits cannot be reduced is an acknowledgment that working employees' benefits cannot be reduced. There is simply no legal distinction that can be drawn between the groups, and certainly no equitable distinction.

As to costs. The mayor started by saying—and I assume he was referring to us—may I continue, Senator Packwood?

The CHAIRMAN. Only for about 30 seconds. I cannot extend to you a privilege I did not give to the others. We make an exception, frankly, for public officials and representatives of the Government, but we do not for all of our witnesses.

Ms. STERN. Let me just say that the cost figures proposed today are totally inaccurate, as our statement details. The mayor mentioned that the \$400 million cost estimate that the city provided in the *Manhart* case was just for the cost of increasing benefits to women, and I would simply like to point out that in the statement New York City submitted to the House, it is today estimating a cost for all women with respect to contributions and benefits, retired and active, of only \$233 million.

We would urge you to look at the city's statement in the *Manhart* brief, and I can simply quote their footnote, which says that the \$400 million estimate is tentative but conservative, based on estimates of required additional employer contributions and additional benefits to be paid present and future retirees.

[The statement follows:]

STATEMENT OF JAMIE STERN, ON BEHALF OF WOMEN IN CITY GOVERNMENT UNITED

This statement is submitted in support of the Fair Insurance Practices Act, S. 372 ("the Act") and, in particular, Section 4(c)(2) which would prohibit an insurer from reducing retirement benefits in order to comply with the anti-discrimination requirements of the Act. This statement is also submitted in response to the anticipated testimony of Mayor Koch and the City of New York before this Committee that Section 4(c)(2) would impose a new liability on New York City of approximately \$862 million. Mayor Koch so testified before the House Subcommittee on Commerce, Transportation and Tourism on February 24, 1983.

The undersigned are counsel to the plaintiff class in *Women In City Government United v. City of New York*—a group, approved by the Court, including more than 70,000 retired and working female members of the New York City Employees' Retirement System ("NYCERS"). These women brought suit in 1975 to challenge the use by NYCERS of sex-differentiated actuarial tables. The use of these tables discriminates against plaintiffs in two ways: (i) during their working careers plaintiffs contribute a higher percentage of their salaries to NYCERS than similarly situated males, and (ii) upon retirement they receive smaller monthly benefits under the single-life retirement allowance.

In April 1981, the United States District Court for the Southern District of New York held that the use of these tables violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e), *et seq.* (1964) ("Title VII"). *Women in City Government v. City of New York* ("WICGU"), 515 F. Supp. 295 (S.D.N.Y. 1981). A trial to determine the appropriate relief to be awarded to the plaintiff class is scheduled to commence in July 1983. Plaintiffs seek to have their contribution rates and benefits levels equalized with those of similarly situated men by extending the benefit of the advantaged sex to the disadvantaged sex. Plaintiffs also seek backpay awards calculated on the same basis with respect to both contributions and benefits.¹

SUMMARY OF POSITION

The undersigned's interest in S. 372 is to urge that the Act and, in particular, Section 4(c)(2), be applicable to public pension plans, such as those administered by New York City.

For many years, New York City has operated its pension plans in clear violation of the law. It has ignored Title VII and the regulations promulgated thereunder. It

¹ Plaintiffs have claimed that the practices found to violate Title VII also violate the Equal Pay Act of 1963 ("The Equal Pay Act"), 29 U.S.C. § 206(d), 42 U.S.C. § 1983 (1979), the Fourteenth Amendment to the United States Constitution and the New York State Human Rights Law, N.Y. Executive Law (McKinney) § 290, *et seq.* These claims remain to be determined. Plaintiffs seek additional relief with respect to these claims.

has ignored the steady stream of judicial decisions striking down discriminatory pension systems under Title VII, most notably, the Supreme Court's decision in *Los Angeles Department of Water and Power v. Manhart* ("Manhart"), 435 U.S. 702 (1978) and the District Court's decision in the New York City case.

After nearly eight years of litigation to compel New York City to end its discriminatory pension practices, we welcome S. 372 as a strong reaffirmation of Congressional opposition to such discrimination. S. 372 clearly defines the obligation to provide nondiscrimination pension plans and it may succeed in motivating New York City to end its admittedly discriminatory practices.

The fairest way to eliminate such discriminatory practices is the method provided by Section 4(c)(2) of the Act which would prohibit the reduction of benefits in order to comply with the Act's anti-discrimination provisions. Indeed, in states such as New York, where the State Constitution guarantees public employees the right to their present levels of benefits, Section 4(c)(2) is the only method of equalization consistent with those constitutional rights and with the Contracts Clause of the United States Constitution. Thus, Section 4(c)(2) would permit employees such as those in New York City to enforce their rights to equal benefits under S. 372 without having to forfeit other constitutionally guaranteed contractual rights.² The section would also serve as a strong deterrent and would discourage the initiation of new discriminatory policies.

Section 4(c)(2) of S. 372 is consistent with the remedial provisions of existing statutes prohibiting sex discrimination in pension benefits. It would impose a liability upon New York City no more extensive than is already imposed by existing law—notably Title VII, the Equal Pay Act, the New York State Constitution, Article V, Section 7 and the Contracts Clause of the United States Constitution, U.S. Const., art. I, § 10, cl. 1.

With respect to the cost of complying with Section 4(c)(2), New York City has provided the House Subcommittee on Commerce, Transportation and Tourism with an estimate of the cost of equalizing contribution and benefit levels without reducing existing benefit levels or increasing current contribution rates. On the basis of years of litigation with New York City on this very point, we believe the City's cost estimate is substantially inflated. We discuss this more fully in Section IV.

THE NEED FOR S. 372 AND SECTION 4(C) (2)

I. Section 4(c)(2) is an essential feature of S. 372 and is consistent with remedial provisions of existing anti-discrimination laws

An essential feature of S. 372 is Section 4(c)(2) which prohibits the reduction of benefits in order to comply with the Act's anti-discrimination provisions. Section 4(c)(2) is consistent with the method of equalization adopted by numerous courts under Title VII and with the express provisions of the Equal Pay Act.

A. Title VII

Title VII prohibits employers from discriminating on the basis of sex against any individual with respect to "compensation, terms, conditions, or privileges of employment". 42 U.S.C. § 2000e-2(a)(1). Pension benefits and the contributions that maintain them are "compensation" under Title VII. *Los Angeles Department of Water and Power v. Manhart*, 435 U.S. 702, 712 n.23 (1978). To remedy such discrimination in pension systems under Title VII, numerous courts across the country have ordered the equalization of contribution rates and benefits at the levels available to the favored sex—in lawsuits brought by both male and female and both working and retired employees.

With respect to the equalization of benefits, the Court of Appeals for the Ninth Circuit recently approved a plan to remedy discrimination requiring the equalization of pension benefits for retired men and women "without reducing the benefits of any individual." *Retired Public Employees' Association of California ("RPEA") v. California*, 677 F.2d 733, 736 (9th Cir.), *petition for cert. filed*, 51 U.S.L.W. 3140 (1982). As a result, retired females who were receiving lower benefits than males will receive increased benefits and the retired males who were receiving lower benefits than females will receive increased benefits. In the opinion of the Court of Appeals, this remedy was "a just result." *Id.*

² We note that, in states like New York, the State Constitution also guarantees that the contribution rates of public employees not be increased. In such states equalization of contribution rates under S. 372 can be achieved only by decreasing the discriminatory rates.

The Courts of Appeals for the Second, Third and Fourth Circuits have all remedied violations of Title VII by extending to the disadvantaged sex the benefit conferred on the other sex. See, *Fitzpatrick v. Bitzer*, 390 F. Supp. 278, 290 (D. Conn. 1974), *aff'd in part and rev'd in part on other grounds*, 519 F.2d 559 (2d Cir. 1975), *aff'd in part and rev'd in part on other grounds*, 427 U.S. 445 (1976); *Chastang v. Flynn & Emrich Co.*, 541 F.2d 1040 (4th Cir. 1976); *Rosen v. Public Service Electric and Gas Co.*, 477 F.2d 90 (3d Cir. 1973).

A similar rule has been applied with respect to the equalization of contribution rates. In *Manhart*, the Supreme Court let stand an injunction prohibiting defendants from applying the higher contribution rates formerly applicable to women. 553 F.2d 581, 583 (9th Cir. 1976), *vacated on other grounds*, 435 U.S. 702, *on remand*, 577 F.2d 98 (9th Cir. 1978).

In addition to prospective equalization at rates available to the advantaged sex under Title VII, numerous courts, which have awarded backpay, have calculated it in the same manner—the difference between the benefit available to the advantaged sex and the benefit available to the disadvantaged sex. See, e.g., *RPEA v. California*, 677 F.2d 733, 734, 736–38 (9th Cir. 1982), *petition for cert. filed*, 51 U.S.L.W. 3140 (1982); *Chastang v. Flynn & Emrich Co.*, 541 F.2d 1040, 1041–42 (4th Cir. 1976); *Rosen v. Public Service Electric & Gas Co.*, 477 F.2d 90, 96 (3d Cir. 1973).

As the above makes clear, under Title VII, numerous courts have awarded both prospective injunctive relief and backpay requiring equalization at the rate available to the advantaged sex. Thus, the remedies provided by S. 372 are consistent with and no more extensive than those now used by courts in enforcing Title VII.

B. The Equal Pay Act of 1963

The Equal Pay Act prohibits employers from providing lower wages to employees doing substantially equal work on the basis of sex. Wages have been defined to include retirement benefits. See, *Laffery v. Northwest Airlines, Inc.*, 366 F. Supp. 763, 789 (D.D.C. 1973), *aff'd in relevant part*, 567 F.2d 429, 443, 478 (D.C.Cir. 1976), *cert. denied*, 434 U.S. 1086 (1978); *Probe v. State Teachers' Retirement System*, 27 F.E.P. 1306, 1311 (C.D.Cal. 1981); *appeal docketed*, Nos. 81-5865, 81-5866 (9th Cir.). See also, 43 Fed. Reg. 166 at 38029 (proposed August 25, 1978); 46 Fed. Reg. 169 at 43851 (proposed September 1, 1981); 29 C.F.R. § 800.116(d).

The Equal Pay Act specifically provides that in remedying unlawful sex discrimination:

"[A]n employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee." 29 U.S.C. 206(d)(1).

Thus, equalization under the Equal Pay Act—like S. 372—must be achieved at the level available to the favored sex.

II. Section 4(c)(2) would impose no liability on New York City not already required by existing law

A. The Anti-Discrimination Laws

As explained above, Section 4(c)(2) provides for the equalization of pension benefits in the same manner as expressly required by the Equal Pay Act and as ordered by numerous courts in remedying violations of Title VII.

Nearly two years ago, the United States District Court for the Southern District of New York found that New York City had violated Title VII in the administration of the New York City Retirement System. *Women in City Government United v. City of New York*, 515 F. Supp. 295 (S.D.N.Y. 1981). The claim that New York City has also violated the Equal Pay Act is still pending before the Court. The relief sought by plaintiffs under both claims requires equalization of contribution rates and benefit levels by extending the benefit of the advantaged sex to the disadvantaged sex. New York City's exposure under S. 372 would be no greater therefore than its current exposure under Title VII and the Equal Pay Act.

B. The New York State Constitution

Wholly apart from the principles of relief under existing anti-discrimination statutes, the New York State Constitution limits the manner in which New York City may remedy its illegal discrimination. The New York State Constitution prohibits any increase in the contribution rates or any reduction in the benefit levels that now apply to male or female city employees. Thus, in states such as New York, equalization of contribution rates under S. 372 can be accomplished only by decreasing the higher rates. Any increase in contribution rates to achieve equality would offend the State Constitution.

Article V, Section 7 of the New York State Constitution provides:

"After July first, nineteen hundred forty, membership in any pension system of the state or of a civil division thereof, shall be a contractual relationship, the benefits of which shall not be diminished or impaired."

The New York State Court of Appeals has consistently construed this provision to prohibit any change in provisions in State or City pension plans that would reduce the benefits to which an employee became entitled at the time of entry into the plan. The leading decision is *Birnbaum v. New York Teachers Retirement System*, 5 N.Y. 2d 1, 176 N.Y.S. 2d 984, 152 N.E. 2d 241 (1958) where the Court of Appeals prohibited the use of new actuarial tables to calculate the benefits of then enrolled plan members because the new tables would have produced a 5 percent decrease in benefits. The Court declared that such a reduction in benefits would breach the contractual rights of enrolled plan members and was thus prohibited by the State Constitution. 5 N.Y. 2d at 11, 176 N.Y.S. 2d at 991, 152 N.E. 2d at 246.

In the twenty-five years that have passed since *Birnbaum* was decided, New York Courts have repeatedly reaffirmed this principle. Amendments to the pension plans that would have diminished or impaired the benefits that enrolled members rightfully expected to receive have consistently been rejected.³ New York courts have prohibited changes in actuarial tables, see, e.g., *Ayman v. Teachers' Retirement Board*, 9 N.Y.2d 119, 211 N.Y.S.2d 198, 172 N.E.2d 571 (1961); *Schechter v. New York State Employees' Retirement System*, 62 App. Div.2d 543, 405 N.Y.S.2d 828 (3d Dept. 1978), *aff'd*, 46 N.Y.2d 983, 415 N.Y.S.2d 991, 389 N.E.2d 472 (1979); changes in the mandatory retirement age, see, e.g., *Donner v. New York City Employees' Retirement System*, 33 N.Y.2d 413, 353 N.Y.S.2d 428, 308 N.E.2d 896 (1974); *Pettit v. McCabe*, 60 Misc.2d 177, 302 N.Y.S.2d 209 (1969), and changes in the formulas used to calculate benefits, see, e.g., *Kleinfeldt v. New York City Employees' Retirement System*, 36 N.Y.2d 95, 365 N.Y.S.2d 500, 324 N.E.2d 865 (1975); *McCaffrey v. Board of Education*, 48 App. Div. 2d 853, 368 N.Y.S.2d 863 (2d Dept. 1975), whenever those changes would have reduced the expected benefits of enrolled plan members.

C. The United States Constitution

Any increase in contribution rates or reduction in the expected benefits of male or female plan members in violation of the New York State Constitution would also constitute an impairment of those members' contractual rights guaranteed by the Contracts Clause of the United States Constitution. U.S. Const., art. 1, § 10, cl. 1. This clause prohibits a state—or any of its municipal subdivisions—from "impairing the Obligation of Contracts," including contractual obligations to provide retirement benefits at a particular age or at a particular rate of contribution. See, e.g., *Pineman v. Oechslein*, 494 F. Supp. 525 (D. Conn. 1980) (state law depriving women of right to retire early at full benefit levels is an impairment), *vacated and remanded on other grounds*, 637 F.2d 601 (2d Cir. 1981); *Opinion of the Justices*, 364 Mass. 847, 303 N.E. 2d 320 (1973) (state law increasing contributions of plan members is an impairment).

Thus, the Contracts Clause of the United States Constitution, as well as Article V, Section 7 of the New York State Constitution, prohibits New York City from amending any retirement plan so as to reduce the benefit levels or increase contribution rates to which employees are currently entitled.

III. S. 372 should cover retirement systems such as that operated by New York City

Mayor Koch, in his February 24, 1983 statement to the House Subcommittee on Commerce, Transportation and Tourism, asked that public retirement systems be specifically exempted from H.R. 100, the House counterpart to S. 372. The inappropriateness of such an exemption is demonstrated by New York City's long-standing failure to comply with existing statutory, constitutional and decisional law. New York City has not conformed its pension practices to the directives of Title VII, the Supreme Court's decision in *Manhart* or United States District Court's decision in *WICGU*. New York City is currently discriminating against members of NYCERS, the Teachers' Retirement System and the Board of Education Retirement System—males and females, employed and retired employees. This discrimination is occur-

³ See, e.g., *Kleinfeldt v. New York City Employees' Retirement System*, 36 N.Y.2d 95, 365 N.Y.S.2d 500, 324 N.E.2d 865 (1975); *Donner v. New York City Employees' Retirement System*, 33 N.Y.2d 413, 353 N.Y.S.2d 428, 308 N.E.2d 896 (1974); *Ayman v. Teachers' Retirement Board*, 9 N.Y.2d 119, 211 N.Y.S.2d 198, 172 N.E.2d 571 (1961); *Schechter v. New York State Employees' Retirement System*, 62 App. Div.2d 543, 405 N.Y.S.2d 828 (3d Dept. 1978), *aff'd* 46 N.Y.2d 983, N.Y.S.2d 991, 389 N.E.2d 472 (1979); *McCaffrey v. Board of Education*, 48 App. Div.2d 853, 368 N.Y.S.2d 863, (Dept. 1975); *Vale v. New York State Employees' Retirement System*, 103 Misc.2d 23, 425 N.Y.S.2d 250 (1980); *Pettit v. McCabe*, 60 Misc.2d 177, 302 N.Y.S.2d 209 (1969).

ring both in the calculation of contribution rates and in the provision of retirement benefits.

New York City has publicly acknowledged the illegality of these practices. Over five years ago, on November 17, 1977, New York City told the United States Supreme Court, in its amicus filing in *Manhart*, that affirmance of the lower court's ruling would result in a cost to the City of about \$400 million to equalize contribution and benefit rates. (Amicus brief dated November 17, 1977 submitted to the United States Supreme Court by New York City in *Manhart*.) After the Supreme Court's decision in *Manhart*, the NYCERS Trustees, by resolution adopted June 16, 1978 and reiterated in a resolution adopted October 6, 1978, expressly acknowledged that their method of calculating contribution rates was illegal.

"... the New York City Employees' Retirement System has been mandated by the Supreme Court of the United States in the *Manhart* decision to change rates of contribution for all female members of the Retirement System effective April 1978 ... (Resolution adopted by the NYCERS Board of Trustees on June 16, 1978).⁴

Thereafter, on December 15, 1978, the Trustees adopted a resolution directing that the lower male contribution rates be available to females. (Resolution adopted by the Board of Trustees of NYCERS on December 15, 1978). Despite their adoption, these resolutions were not implemented.

Two and one half years later, at the May 12, 1981 meeting of the Board of Trustees, a union representative made a motion calling for the implementation of the previously accepted rates of contribution. The motion was tabled by the Trustees. The motion was again considered at the June 26, 1981 meeting of the Board of Trustees. By resolution adopted on June 26, 1981, the Trustees voted that the motion remain tabled. In short, in the five years since *Manhart* and in the two years since the Court's decision in *WICGU*, New York City has done nothing to rectify its admittedly discriminatory practices.

With respect to public retirement systems, such as those administered by New York City, S. 372 is needed to reaffirm what existing anti-discrimination laws and the many judicial decisions implementing those laws have required. All those who provide insurance benefits must do so on a sex-neutral basis. To achieve sex neutrality, no insured or employee should lose a benefit to which they are otherwise entitled.

S. 372 would not impose any additional liability on New York City, but its enactment may provide the impetus to New York City finally to take action to end its discriminatory practices. S. 372 clearly states the obligations of those who provide insurance benefits and may provide a clearer guidepost for public retirement systems, like those administered by New York City.

IV. The remedial provisions of section 4(c)(2) are needed to eliminate pension discrimination and compensate victims of that discrimination

S. 372 will eliminate discriminatory practices only if the victims are willing to enforce their rights and the perpetrators are deterred from illegal conduct. If the victims can obtain for themselves the benefit extended to members of the advantaged sex, they will be encouraged to enforce their rights. Similarly, if the offenders know that they will be ordered to provide the victims with benefits illegally withheld, they will be deterred from withholding such benefits.

If, however, the only result of enforcement efforts is to deprive the advantaged sex of its advantage, there would be little incentive to oppose discrimination. Even worse, a disincentive would be created since any employee who brought suit would incur the animosity of fellow employees.

Section 4(c)(2) will encourage victims of discrimination to enforce their rights and will discourage discriminatory policies. As applied to New York City employees, Section 4(c)(2) would permit enforcement of rights under S. 372 without the forfeiture of other, constitutionally protected, contractual rights.

New York City has suggested two alternatives to Section 4(c)(2), previously proposed by the City in *WICGU* to remedy its violation of Title VII. The City has suggested a "weighted midpoint" solution, under which new benefit and contribution levels would be set midway between the current male and female levels. As an alternative, the City has suggested that male contribution and benefit levels be applied to females.

Under either approach, the costs of remedying discrimination would largely be borne by one group of insureds or another—even where, as in the case of New York City employees—those insureds have other constitutionally protected rights not to

⁴ The full text of all NYCERS' resolutions referred to herein are annexed as an appendix.

have their benefits decreased. If the "weighted midpoint" proposal were adopted in New York City, the benefits of males who choose the single-life retirement allowance and females who designate beneficiaries would be reduced. If the City's alternative proposal were adopted, the benefits of females who designate beneficiaries would be reduced.

V. Cost of equalization at the rates available to the favored sex

New York City has taken the position that compliance with Section 4(c)(2) would cost New York City approximately \$862 million. This is the City's latest in a series of estimates of the cost of similar relief in the *WICGU* litigation, although the estimates of cost have varied with time. In November 1977, in its amicus filing to the United States Supreme Court in *Manhart*, New York City claimed that it would cost approximately \$400 million to equalize contributions and benefits at the rates available to the favored sex. (Amicus brief dated November 17, 1977 submitted to the United States Supreme Court by New York City in *Manhart*.) On September 17, 1981, in response to plaintiffs' interrogatories, the City estimated the cost at about \$791 million. (Defendants' response to Plaintiffs' Questions 1 and 2(c) of June 2, 1981).

In the course of litigation, plaintiffs discovered that the City's cost estimates were based on assumptions about employees' contribution rates and about the retirement plans which employees select that are not consistent with their actual behavior. The use by New York City of these and other incorrect assumptions has resulted in inflated cost projections.

For the last eight months, plaintiffs have been attempting to obtain the information from New York City needed to determine accurately the cost of equalization at rates available to the advantaged sex. Because New York City has not yet supplied the necessary data, we are not in a position at this time to provide your Committee with an accurate cost estimate. However, because Mayor Koch has urged that Section 4(c)(2) be eliminated on the basis of cost, we feel that it is necessary to bring to this Committee's attention certain evidence obtained in the course of the pending lawsuit against which Mayor Koch's claims of fiscal impact should be measured.

This evidence suggests that New York City's costs for the present pension system are declining dramatically and that by the early 1990's, this may result in annual savings to the City of over \$1 billion. The evidence further suggests that the City pension system is producing substantial excess assets which could be used to remedy its discriminatory features. For example:

EVIDENCE OF DECLINING COSTS

On March 3, 1981, the Comptroller of New York City issued a press release stating that "the cost of funding the City's pension funds will likely decline dramatically as a percent of payroll in the late 1980's provided that no changes are made in the current system." Relying on a study performed by the Comptroller's staff and an actuarial consulting firm in New York City, the Comptroller stated that "a study he commissioned showed that the decline 'may provide annual savings of over \$1 billion by the early 1990s. . . .'" The Comptroller projected a "decline in contribution [by New York City] from roughly 23 percent of payroll to under 10 percent over a 10- to 12-year period. That translates into billions of dollars."

According to the press release, the Comptroller provided a copy of his findings to Standard & Poor's Corporation. "The rating agency expressed an interest in the status of the pension funds in its recent meetings with City officials." On March 5, 1981, Standard & Poor's Corporation issued a press release which stated that it had assigned a rating of "BBB" to the general obligation bonds of the City of New York. Its previous rating had been suspended in April of 1975.

EVIDENCE OF EXCESS ASSETS

(1) According to documents produced by its auditors, the City calculated that "the average rate of return in fiscal year 1980 was 8.21 percent. 'Excess interest' was \$288 million". The City also calculated the "the average rate of return in fiscal year 1981 was 8.73 percent, generating \$148 million of excess interest."

(2) For the fiscal year ended June 30, 1979, the City's auditors estimated that the City's annual costs for its Teachers Retirement System were overvalued by about \$14 million and that its costs for NYCERS were overvalued by about \$10 to \$15 million a year.

(3) According to the City's answers to Court interrogatories in *WICGU*, New York City is collecting more money from its employees than is necessary to provide the

benefits based on its employees' contributions. The City is also contributing more money to the retirement system on behalf of its employees than is necessary to provide benefits based on City contributions. As a result, the pension system is accumulating assets not needed to pay employee benefits.

To illustrate: a 60-year-old female member of NYCERS who retired on June 30, 1981 with accumulated contributions of \$10,000 would receive an annuity under the single-life plan whose present value would be \$8,468.04. If the City contributed \$10,000 on her behalf in "Increased Take Home Pay Contributions," she would also receive a pension whose present value would be \$8,468.04. The same holds true for males upon retirement.

On the basis of the above, it is clear that New York City's cost estimate is subject to very serious question. While we do not believe an increase in cost should excuse the failure to remedy an admittedly illegal pension system, to the extent that cost is relevant, New York City's estimate of cost should not be accepted.

CONCLUSION

Despite the enactment of Title VII, the Equal Pay Act and the numerous judicial decisions striking down discriminatory pension systems under those Acts, the problem of pension discrimination persists. New York City's continuing failure to comply with existing statutory, constitutional and decisional law demonstrates the need for the directives of S. 372 to be binding on public retirement systems.

An essential feature of S. 372 is Section 4(c)(2)'s prohibition on the reduction of benefits in order to comply with its anti-discrimination provisions. This Section would permit New York City employees to enforce their rights under S. 372 without having to forfeit other constitutionally guaranteed contractual rights. The Section would also serve as a strong deterrent and would discourage the initiation of new discriminatory policies. Finally, this Section would incorporate and reaffirm the principles for calculating relief expressly set out in the Equal Pay Act and adopted by numerous courts in enforcing Title VII.

APPENDIX

NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

[Cal. No. R-155]

Whereas, the New York City Employees' Retirement System has been mandated by the Supreme Court of the United States in the *Manhart* decision to change rates of contribution for all female members of the Retirement System effective April 1978, and

Whereas, it is the responsibility of the Board of Trustees to comply with this court mandate and insure adequate staffing to avoid further litigation and possible penalties, and

Whereas, the Board of Trustees has instructed the Executive Director that no employee currently on staff of the Retirement System be assigned to this task, except where the Executive Director deems it necessary for supervisory purposes, therefore be it

Resolved, that the Board of Trustees does hereby direct that sufficient funding be provided by the Office of Management and Budget to adequately staff the Retirement System (estimated at 15 additional employees) in order to comply with said Supreme Court Order, and be it further

Resolved, that the Board of Trustees does hereby appoint a committee of three consisting of Mr. Philip Michael, Chairman and Mr. Barry Feinstein and Mr. Bertram Weinert to insure compliance with the direction of this Board.

The foregoing is a true copy of a resolution adopted by the Board of Trustees on June 16, 1979.

NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

[Cal. No. R-125]

Whereas, the Supreme Court of the United States, on April 25, 1978, in *City of Los Angeles, Department of Water and Power, et al. v. Manhart, et al.* held that the Department's use of sex-based actuarial tables requiring female employees to make larger contributions to its pension fund than similarly situated male employees violates Title VII of the Civil Rights Act of 1964, and

Whereas, the rates of contribution for all members of the New York City Employees' Retirement System who joined prior to July 1, 1976 are predicated on sex-based actuarial tables requiring female members to make larger contributions to the System than similarly situated male members, and

Whereas, the Board of Trustees desires to conform to the ruling the *Manhart* case by equalizing the rates of contribution for the aforementioned members, now therefore be it

Resolved, that the Board of Trustees hereby directs the Actuary of the System to determine forthwith a rate of contribution for each member of the System who is not subject to Article 14 of the Retirement and Social Security Law in such manner that rates will be equal for similarly situated male and female members, and be it further

Resolved, that when the changes in contribution for all affected female members are so determined, the Executive Director is directed to implement said determination forthwith.

The foregoing is a true copy of a resolution adopted by the Board of Trustees on October 6, 1978.

NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

[Cal. No. R-140]

Whereas, on October 6, 1978, the Board of Trustees adopted resolution R-125, which stated in part:

"... the Board of Trustees hereby directs the Actuary of the System to determine forthwith a rate of contribution for each member of the System who is not subject to Article 14 of the Retirement and Social Security Law in such manner that rates will be equal for similarly situated male and female members . . . ; and

Whereas, in a letter dated December 15, 1978, the Actuary of the System informed the Board of Trustees that in order to equalize rates of contribution for similarly situated male and female members, it would be necessary to adopt a resolution making rates heretofore applicable to male members applicable to female members as well; and

Whereas, the Actuary of the System submitted such rates to the Board of Trustees on December 15, 1978; and

Whereas, the Board of Trustees is among the defendants in a lawsuit initiated by Women in City Government United concerning, inter alia, rates of contribution of female members of the System; and

Whereas, several meetings with the plaintiffs' attorney have been held, in the presence of a Federal judge, in an effort to arrive at a negotiated settlement of this lawsuit; and

Whereas, significant progress has been made toward a mutually satisfactory settlement; and

Whereas, any negotiated settlement will certainly entail a decrease in the rates of contribution of female members, now therefore be it

Resolved, that the Board of Trustees does hereby accept the rates of contribution of female members of the New York City Employees' Retirement System as determined by the Actuary of the System in accordance with its resolution of October 6, 1978, and be it further

Resolved, that the Executive Director of New York City Employees' Retirement System defer the implementation of said female rates until they are adopted by the Board of Trustees.

The foregoing is a true copy of a resolution adopted by the Board of Trustees on December 15, 1978.

NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM

[Cal. No. R-113]

Whereas, at the May 12, 1981 meeting the Board of Trustees tabled a motion made by the District Council 37 representative directing (1) the Executive Director to implement the new rates of contributions that would equalize the rates between men and women, (2) the Law Department not to pursue an appeal in the Women in City Government case and (3) the Retirement System to establish new actuarial tables re: annuity values and option costs, and

Whereas, such motion was tabled at the May 12, 1981 Board of Trustees meeting, the aforesaid motion was again made by the District Council 37 representative, and

Whereas, after due deliberation the Board voted to leave the motion of May 12, 1981 tabled, therefore be it

Resolved, that the District Council 37's representative's motion of May 12, 1981 directing (1) the Executive Director to implement the new rates of contributions that would equalize the rates between men and women, (2) the Law Department not to pursue an appeal in the Women in City Government case and (3) the Retirement System to establish new actuarial tables re: annuity values and option costs, remains tabled.

The foregoing is a true copy of a resolution adopted by the Board of Trustees on June 26, 1981.

The CHAIRMAN. Let me ask you a legal question. You are all three lawyers, right? OK.

Ms. STERN. Yes.

The CHAIRMAN. You are convinced that any kind of weighted midpoint is unconstitutional under New York's constitution?

Ms. STERN. That is correct.

The CHAIRMAN. Can I have your brief on that, if you have one? Because very clearly the issue of impairment of contracts is not unique just in New York in this case. And of course, you heard Mayor Koch indicate that he thinks that it is not the law, and had a brief appended to his testimony. Your brief on that would be most helpful.

I did not sense, when he was talking about not changing the retirement benefits for current retirees, those who are retired, that he thought he was bound by the constitution. I sensed that as a matter of grace, but that it could be changed for those who were going to retire. But I do not think he was saying he was bound by the constitution in his mind as far as those who are retired.

Ms. STERN. I might say with respect to that, in the original answer filed in the pending case in New York the city listed as an affirmative defense that they were precluded by the State constitution from reducing any benefits or contributions. In the amended complaint that they have recently filed, they have simply changed their position. But we think that a review of the law would substantiate our position on this point quite clearly.

The CHAIRMAN. Well, I want to see the brief because that is a factor we have to consider. I think the argument is going to be made that we are going to be impairing contracts for everybody.

Ms. STERN. Yes. I would note that in our statement we deal with this in a summary fashion, but we will provide you with a full brief on the subject.¹

The CHAIRMAN. But yours also hinges on the New York Constitution, does it not? Or are you also hinging it on the U.S. Constitution?

Ms. STERN. No; with respect to New York City's title VII violations, also on the U.S. Constitution. There is a line of title VII cases out of Connecticut, the district of Connecticut, *Fitzpatrick* and then a subsequent case, *Pineman*. That was an early retirement case and the court held that the denial to men of early benefits available to women, was a violation of title VII. It went all the way up to the Supreme Court and down.

The relief ordered was about \$400 million worth in 1978, and then the State legislature thereafter simply eliminated the early

¹ The brief has been retained in the committee files.

retirement benefits for women. The women went back to court claiming that their rights under the contract clause of the U.S. Constitution had been violated. The district court agreed with them and said that they had State contractual rights to benefit levels which had been taken away, that was a violation of the contract clause.

It went up to the second circuit. The second circuit said, well, in New York it is clear that you have these contractual rights, they are guaranteed by the State constitution, but in Connecticut no court has ever said that.

So it remanded the case so that the State court could determine whether, in fact, employees had contractual rights. But the second circuit did not disturb the contract clause analysis.

The CHAIRMAN. Thank you. A brief can be an adjective as well as a noun.

Let me ask you this. I assume you would be opposed to the weighted midpoint even if it was constitutional?

Ms. STERN. That is correct. We believe that, first of all, there has been no showing of such extraordinary costs that it would be justified. But second, under title VII topping-off has been awarded routinely, and, in fact, that is what is consistent with all of the wage discrimination cases and frankly the fringe benefits discrimination cases as well.

The CHAIRMAN. I think I would like to see you and Ms. Townsend on the television show.

Ms. STERN. I think I would like the opportunity.

The CHAIRMAN. You are very impressive. I had a chance to see your statement ahead of time. It is clearly a superior piece of legal work and I appreciate it from a craftsman's viewpoint.

Ms. STERN. Well, thank you very much.

The CHAIRMAN. I have no other questions.
Frank.

Senator LAUTENBERG. One, I do not, because I am out of my—

The CHAIRMAN. You are not going to ask who they represent?

Ms. STERN. I grew up in New Jersey.

Senator LAUTENBERG. Are you still there?

Ms. STERN. I am in New York City now.

Senator LAUTENBERG. Thank you.

I dare not question Ms. Mandel because her husband is one of my closest friends and I do not want to pick on Ms. Sandage. So thank you very much.

The CHAIRMAN. They clearly represent groups that are not relevant to the mainstream, apparently.

Senator LAUTENBERG. I would not say that.

The CHAIRMAN. I would only say it in jest.

Good job. I appreciate it. Thank you very much.

We will conclude today with Mr. Roger Day and Mr. Michael Thome.

Mr. Day, go right ahead.

STATEMENTS OF ROGER C. DAY, COMMISSIONER OF INSURANCE, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS; AND MICHAEL N. THOME, CHIEF EXECUTIVE OFFICER, CALIFORNIA TEACHERS RETIREMENT SYSTEM, REPRESENTING MUNICIPAL FINANCE OFFICERS, ACCOMPANIED BY THOMAS BLEAKNEY, SENIOR VICE PRESIDENT, MILLIMAN AND ROBERTSON

Mr. DAY. Thank you, Mr. Chairman.

I am Roger Day, president of the National Association of Insurance Commissioners. We have submitted a statement, with respect to your buzzer and your bell, and I would like to have it included in the record, I think, and just briefly make some comments from it, if I could.

The CHAIRMAN. The entire statement will be in the record.

Mr. DAY. Thank you.

It is difficult to know, Mr. Chairman, what might be useful to the subcommittee from our perspective. As I have listened to previous witnesses, it has at different times been difficult to know what is at issue in S. 372 and before the subcommittee. I thought I had a fair understanding of that prior to my coming here.

I think that part of our concern, and in fact the preponderance of our concern goes to the issue of the retroactive implications of S. 372 as it is now written. I think in your opening remarks when you used the words that henceforth such actuarially sound or unsound, as they may have been, standards would not be permitted, we found a distinction that may provide a solution that is not as threatening to the solvency of the insurance industry and therefore the State insurance regulation as if such a distinction were not provided.

I have diligently sought to obtain a realistic estimate of the cost impact, and have been unable to do so. I think we are getting closer. The field of difference is certainly narrowing, but I think since different lines are impacted differently, we are not yet there, and I believe it will be prudent for the Congress to be certain of the cost impact before a final decision is made on this measure.

Basically, I would see the auto impact as more properly classified as—the \$700 million figure, I think, is accurate, but I think that is properly classified as being at risk, rather than being something that will be automatically transferred from one class to another.

The reason for that is, other variables, including mileage driven and age and a variety of other factors, will probably also be used to mitigate that somewhat. What I think is perhaps important there is that there be a sufficient implementation lead time allowed to mitigate that impact and avoid disruption of the marketplace.

The CHAIRMAN. Let me ask you a quick question on auto insurance. Assuming that you had any reasonable lead time at all, what difference does it make if the policies are seldom more than a year's duration? Are they, in auto?

Mr. DAY. Part of the impact I think it would make is to inform insurance consumers as to what was going to happen. To some extent there would be less of a tendency to discount for ignorance, and I think that would be an important variable. The disruption that would be caused there, I think, could be a short-term disruption.

One of the other elements, by the way, that I think is crucial to the subcommittee's understanding of the issue is that there is not a monolithic insurance industry. There are about 17 insurance industries, each of which thinks it is the insurance industry.

The CHAIRMAN. I am sure that is not limited to the insurance industry, either.

Mr. DAY. I am sure it is not, but it has been my most painful experience to date to discover that. It is also, I suspect, why there is not a single position with respect to this matter. The position of State regulators also is not a uniform and singular position. We have opposed S. 372 and H.R. 100 as drafted chiefly because of the implications of the retroactivity. Were that not at issue, I suspect we would take a much different position, although I do believe we have some experience that may be useful to the subcommittee, and that is important as a public policy matter.

The CHAIRMAN. Let me hear that again. But for the retroactivity, you would take a different position?

Mr. DAY. I think we would take a much different position.

The CHAIRMAN. Would that be a position in support?

Mr. DAY. I think it could be in support. It depends on the other elements and what the impact would be. In essence, I think we are a critical observer, not an opponent, because of the retroactivity. I think we must urge the Congress not to pass the measure, but we would prefer not to have to be a party per se.

In effect, our interest and public policy concerns tend to be as broad as those of the Congress, because we have a number of different and sometimes conflicting objectives. The No. 1 objective that we serve is to maintain solvency. The solvency impact of this measure is difficult to predict, based largely on the mix of business sold by an insurer. The greater the individual policy and individual marketplace mix, the greater the solvency impact will be.

Basically, I think that what we have at issue in a sense before us is the dichotomy between the civil rights tradition of individual equity and the insurance tradition of classification.

The CHAIRMAN. Go ahead. Go on a little longer, because I interrupted you with some questions.

Mr. DAY. Thank you.

Insurance is based first on the development and design of different classifications where theoretically all members of that class face an equal degree of exposure to an unknown in the specific but knowable in the aggregate, based on the law of large numbers risk. Once those classes have been defined and a person is then underwritten against the classification criteria, that is, to select what class that individual belongs in, it is a traditional insurance principle that all classes must and should stand on their own, lest they be unfairly discriminatory.

Different lines of insurance are sold in essence to different primary marketplaces where the individual marketplace itself is the marketplace where this measure will have the greatest problematic effect. I think that there is no doubt that through either averaging or prospective implementation, that in the pension field by itself, the measure could and probably should be accommodated for a variety of reasons. Anything that is sold secondary to employment where there is probably an equal mix of insurance and civil rights

principles, at least under title VII, probably has an equivalent accommodation. In the individual marketplace where competition is of greater efficacy in the ease of collecting certain variables, whether they are substitution variables or not, may make better sense.

That is why I think greater caution should exist, because instead of making insurance equally affordable and equally available, I think there are serious risks that we would make it unaffordable and unavailable, and the specific lines we will be most concerned about are disability income and health insurance sold on an individual basis.

The final, and with your indulgence, I would only add one more thought from the social policy standpoint, and that is that I think it is awfully crucial that the identity that is sought here in terms of treatment of men and women not be an excuse for reducing the scope and level of benefits for both sexes. A 10-year certain annuity sold at the time of retirement would in fact be totally in compliance with S. 372 as now written. It would not be a net social gain for anybody, and would be a net social loss for all.

I have serious concern that that may be certainly not an intended consequence but a possible consequence that ought to be thought about very seriously.

[The statement follows:]

STATEMENT OF ROGER C. DAY, PRESIDENT, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Mr. Chairman, this statement is being submitted to you by Roger C. Day, Commissioner of Insurance of the State of Utah, and President of the National Association of Insurance Commissioners, commonly referred to as the NAIC. The NAIC is a voluntary association of the principal insurance regulatory officials in the 50 states, the District of Columbia, and the U.S. insular possessions. It is the oldest association of state officials, having its inception in 1871.

The Committee's concern for civil rights is shared by the NAIC. The insurance buying public relies on the state commissioners to safeguard the financial integrity of the insurance industry and the fairness of its dealing with the public. This is the genesis of the state regulatory's responsibility. Because of the possible impact on the insurance industry's solvency and on the effectiveness of state regulation of insurance, I urge the Committee to carefully consider S. 372 as it is now drawn.

Given the existence of millions of policies sold by thousands of entities, which policy forms must be reviewed and revised by the companies and approved by the 50 states, the 90-day effective date and the immediate impact features will lead to catastrophic results. I am confident that these consequences are not intended by the Committee and the proponents of the legislation. Since these consequences do not relate to those social policy questions of most apparent concern to the proponents, I am hopeful that a more realistic implementation date would be included in markup.

It is my belief that discrimination based on race, color, religion, or national origin is already illegal under the insurance laws of the several states and constitutes a violation of the insurance codes of those states. Fraternal insurers who wish, as an extension of other limited programs or specific relationships, to offer insurance products exclusively to their members provide a possible exception as to national origin and religion. Notwithstanding those entities, insurers making insurance products available to the general public who discriminate on the basis of national origin or religion would be in violation of that state's insurance laws.

The primary element of S. 372 which is attracting the most comment is "sex discrimination" as it may apply to the use of sex as a variable in insurance practices. Although a few states have restricted the use of sex, as well as other factors for private passenger automobile insurance, sex is generally recognized as a legitimate actuarial rating factor.

The NAIC does not believe that a definitive study has been made of the likely effect which enactment of this bill would have in the pension, life, health, auto, and annuities fields. S. 372 will immediately affect existing insurance contracts by mandating increased pension and annuity benefits, thereby creating new unfunded li-

abilities. This "topping up" of benefits will require some life insurers to draw on surplus, which may adversely affect their financial stability and/or solvency.

The insureds of this nation depend on the state insurance regulators to monitor and maintain the financial integrity of the insurance industry. That job is difficult enough in our present economic environment without experiencing unanticipated, unfunded events as required by S. 372 in its present form.

I believe that state regulation can and does offer a system which provides a framework for implementing public policy at either the federal or state level. The NAIC particularly recognizes the substantial federal primacy in the employment area. To the extent present pension plan practices are believed to be contrary to desired civil rights standards or goals (especially from the standpoint of an employee, rather than from the standpoint of the aggregate result to a class of employees), it may be more feasible to limit the Committee's efforts to that issue without risking mayhem in the marketplace and jeopardizing insurer solvency. Special limitations on the use of sex as a variable could be enumerated in federal guidelines and implemented at the state level without risking the problematic outcome associated with S. 372, as drafted.

S. 372, as drafted, will result in adverse social consequences to the insurance buying public, both in terms of the availability and costs of individual coverages. Congressional enactment of a measure which could result in making certain insurance coverage equally unavailable and unaffordable to both sexes would not constitute a net social gain for the public as a whole or either sex as a class and could result in catastrophic hardships for many individuals.

To best respond to the equitable interests of proponents, I would suggest a pension specific enactment covering the entire field, rather than dealing only with insurers. It is essential that a pension enactment be adopted without exceptions or gaps so that the lessons painfully learned with the Multiple Employer Trusts in health coverage after ERISA passage are not repeated. A pension-specific enactment with a realistic implementation timetable and structure could correct the perceived, and, from an individual, as opposed to a class standpoint, the actual civil rights inequities of concern to the Congress. The development of actuarially sound, comprehensive, and universally applied limitations on the use of sex as a variable in insurance implemented through the state insurance regulatory mechanism could respond to the equal protection needs of female insurance consumers without adversely affecting the due process and potentially conflicting equal protection rights of males or individual policyholder or shareholder interests, without regard to sex.

The NAIC urges the Committee on Commerce, Science, and Transportation not to report this bill in its present form until the Committee has had the opportunity to accommodate realistically the bill's impact on the financial stability of the insurance industry and on the public interest secured by the state regulation of insurance. Thank you for allowing me to appear here today. The NAIC would be happy to provide any additional assistance that you might deem desirable.

The CHAIRMAN. Thank you very much. Very good testimony.

Mr. Thome. Do I pronounce that correctly?

Mr. THOME. Thome.

The CHAIRMAN. Thome. I am sorry.

Mr. THOME. Mr. Packwood, I am Mike Thome. I am chief executive officer of the California State Teachers Retirement System. With me I have Mr. Thomas Bleakney, a senior vice president of Milliman and Robertson, who happen to be the actuaries for your system the Public Employees Retirement System of Oregon as well as my system.

The Municipal Finance Officers Association supports the intent of the Fair Insurance Practices Act. We are concerned about the cost that will be borne by State and local governments. The financial burden of costs caused by the proposed legislation results from the retroactive application of gender-neutral tables and the topping-up provision. Both would create a large unfunded liability. If State and local governments cannot make the contributions required to meet the new and unplanned obligations mandated by this legislation, their actuarial soundness will be jeopardized.

We have shown the actual impact of the act in two systems. Mr. Chairman, the Oregon Public Employees Retirement System was converted to unisex tables prospectively in 1978. This bill will cost \$33 to \$40 million because of its retroactive requirement. I would like to discuss the dilemma that faced the system I administer as a result of meeting the requirements of this bill.

There is no sex distinction in the basic benefit that we provide our members. However, we have a sex-distinct benefit for teachers who elect to trade in the basic benefit for an optional benefit. The most common election is for a continuation of the pension to a spouse, since the average man has a higher insurance risk than the average woman based on longevity.

This option costs more for a man than for a woman. Let me give you some specific examples. Our average teacher retires at age 61. Consider two teachers, one man and one woman, retired at age 61. Suppose each is entitled to \$1,000 per month pension, and that each has a spouse the same age. If the man wishes to have his pension continued to his wife after his death, he will have to accept a retirement allowance of about \$790 per month. The female retiree electing a male beneficiary will be reduced to approximately \$890 a month. Thus at present a woman gets about \$100 per month more than a man under these circumstances.

Now, let me explore the possibilities open to us to try to conform to the gender-neutral factors for future retirees. For future retirees, we have the choice of making a shift of sex-neutral tables with no cost to the State or eliminating benefit options that are based on sex-distinct factors, or some combination thereof. If there is to be no cost to the State, each teacher's benefit in my example would be somewhere between \$790 and \$890 a month. The actual benefit would have to be a form of weighted average to reflect the relative proportions of men and women who choose the option.

This approach would be cost-neutral as far as California taxpayers are concerned. However, male teachers would get an unexpected windfall in the form of a modest increase, 3 to 4 percent of their retirement allowance. Conversely, female teachers would sustain a much bigger reduction, 9 to 10 percent, in their benefit.

This introduces another possibility which adds to our difficulties. Adoption of unisex factors for public employees which disadvantages any particular group is bound to increase the potential for litigation by the disadvantaged group. It does not seem unreasonable to present a scenario where our women teachers will sue the State for having their benefits unfairly reduced as a result of this legislation.

The actuarial present value of complying with the act will be \$2.4 million without retroactive application. However, this bill also would require us to top up benefits. Again, it would be the man teacher whose benefit would be increased, but the price tag is somewhat more modest, about \$200 million. Here, the impact would be immediate. We would not have time to budget for this. Instead, we would simply increase taxes immediately to pay the additional benefits to retired men.

These findings are similar to those of Mr. Ryan. The males will appreciate it, I am sure, but I find it hard to imagine that they

or—more particularly the women, who will get nothing—will understand this is all in the interest of fair insurance practices.

Consideration should be given to the possibilities for implementing this act. Alternatives to retroactive application and the topping-up provisions must be explored so as not to place undue financial stress on State and local governments.

Unisex tables presently used by State and local pension plans must be grandfathered into the law, and newly devised cost-neutral tables will be acceptable under the act.

And the final sentence, the Congressional Budget Office should analyze this act and prepare a State and local fiscal statement under the enabling State and Local Government Cost Estimate Act of 1981.

Thank you, sir.

[The statement follows:]

STATEMENT OF MICHAEL N. THOME, CHIEF EXECUTIVE OFFICER, CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM

Mr. Chairman and members of the Committee, I am Michael Thome, Chief Executive Officer of the California State Teachers' Retirement System. I am testifying on behalf of the Municipal Finance Officers Association (MFOA) as a member of its Committee on Public Employee Retirement Administration (COPERA). I am accompanied today by Mr. Thomas Bleakney, F.S.A., Consulting Actuary from the Seattle office of Milliman & Robertson, Inc.

We appreciate this opportunity to present the views of State and local government finance officers and public pension plan administrators on S. 372, legislation cited as the "The Fair Insurance Practices Act."

The Municipal Finance Officers Association represents 9,200 members who are State and local government finance officials, appointive or elective, and public finance specialists. Included in the MFOA membership are public employee retirement system administrators, such as myself, who are responsible for the day-to-day operation and supervision of public pension plans. I feel that it is important for this Committee to recognize that State and local government finance officers have many years of experience with public employee retirement systems.

As the financial managers in our Nation's cities, counties, and State governments, we have a responsibility to plan for the long-range financing of our governments. To fulfill this responsibility, we must pay close attention to the costs and future liabilities of public employee retirement systems and make sure that they are properly administered and financed.

The purpose of S. 372 is to prohibit discrimination in insurance and annuity programs on the basis of sex with respect to: the methods used to determine access, availability of coverage, terms, conditions, pension contribution rates and benefit coverage. The MFOA supports the intent of the Act, as indicated in our policy statement. However, we are concerned about the cost that will be borne by State and local governments.

In the past, most pension benefits for State and local employees were calculated by converting accumulated member and employer funds to annuities, using the standard insurance practice of basing annuities on sex-distinct tables. The tables showed that females, on average, enjoyed greater longevity than males. Therefore benefit payments calculated using these tables resulted in lower annual benefits for females. The largest percentage of current State and local plans, 82 percent as reported by the U.S. House Pension Task Force Report on Public Employee Retirement Systems, are of the defined benefit type. These plans promise a specific benefit level, regardless of sex, based on a formula that weights the retiree's years of service, age, and salary history. Most of the sex-distinct factors in use in defined benefit plans are for optional benefits—changing the sex-neutral guaranteed benefit to some other form. Even here, although there are no comprehensive data documenting the extent to which unisex tables have been adopted for this purpose, in recent years a clear trend has been established in that direction. U.S. Department of Labor study issued in January 1983 estimates that approximately half of the defined benefit plans in its sample are using gender-neutral tables to calculate annuity benefits. We are proud of our record in this area and want assurances that the unisex tables

now in use will be acceptable under the Act. Moreover, a guarantee that newly devised cost-neutral tables will also be acceptable.

One source of the financial burden of the proposed legislation is from the retroactive application of gender-neutral tables and the "topping-up" provision (i.e. increasing all benefit amounts paid to the level received by the favored sex.) If unisex tables are applied retroactively (by this the Act envisages the recalculation of all future and present benefit payments) and benefits are topped-up, a large unfunded liability will be created. If State and local governments cannot make the contributions required to meet the new and unplanned obligations mandated by this legislation, their actuarial soundness will be jeopardized.

A case in point, Mr. Chairman, is the Oregon Public Employees Retirement System with 137,000 active and 40,000 retired members. In 1978, the system converted to unisex benefit tables. However, the bill before us would require increases in two types of benefits payable to members who retired before the unisex factors were adopted. For women the portion of the benefit purchased by member contributions would be raised to the level provided by the male annuity purchase rates. About a 12 percent increase on the average. Men who retired under options 2 and 3 of the plan would have their benefits raised to the level provided by the female conversion factors. On the average, affected option 2 benefits would increase by about 22 percent; option 3 benefits, by about 11 percent.

To now use the unisex factors, retroactively, would increase the unfunded liability by \$33 million to \$40 million, requiring an additional 0.10 percent to 0.15 percent increase in present employer rates; currently at 12.17 percent of payroll. (A detailed evaluation is attached.)

The effect on State and local governments of retroactively disallowing the use of sex-distinct tables is fiscally significant. Mayor Koch, testifying before the U.S. House Subcommittee on Commerce, Transportation and Tourism on February 24, 1983 estimated that the "Nondiscrimination in Insurance Act" in its present form would cost the City \$1 billion over the next 16 years. The Mayor suggested two options to the "topping-up" provision that would accomplish the intent of the bill, equalization of benefits, without bankrupting the pension systems. The first, a weighted mid-point solution, would cost \$107 million; the second, a simple average of benefit payments, \$113 million over the same period.

Since this bill has a significant fiscal impact on State and local governments, a comprehensive study of the cost should be undertaken by the Congressional Budget Office (CBO) under Public Law 97-108. The "State and Local Government Cost Estimate Act of 1981" requires the CBO to compile a fiscal analysis for pending legislation reported out of congressional committee that imposes increased costs of \$200 million or more on State and local governments.

I would like to discuss the dilemma that faces the California State Teachers' Retirement System as a result of attempting to meet the requirements of this bill. I will start with the basic premise which seems not to be disputed in any of the writing on the subject—on the average, women live longer than men. Certainly the statistics that our own system has developed clearly indicate this beyond the shadow of a doubt. Thus, at each of the key pension ages between 60 and 75, our actuaries tell me that our women retirants have a mortality rate of between 50 percent and 60 percent of that of men at the same age. Thus, approximately 2 percent of our 65-year-old men will die within a year, whereas the rate is about 1 percent for women. These relationships hold at all of the ages.

Of course, we recognize that those statistics are applicable only on the average, and do not apply to individuals. Obviously, most men will survive their 75th year where some of the women will die.

Another fact to keep in mind is that there is no sex distinction in the basic benefit that we provide our members. All teachers, male or female, get the same percentage of salary at retirement if they have the same service. However, we do have a sex-distinct benefit for teachers who elect to "cash in" the basic benefit for an optional benefit. The most common election is for a continuation of the pension to a survivor, generally the spouse of the employee. This kind of election is just like buying an insurance policy, with the proceeds to be payable to the beneficiary (generally the spouse) in the form of a continued pension. Since the average man has a higher insurance risk than the average woman, this "insurance policy" costs more for a man than for a woman.

Let me give some specific examples. Our average teacher retires at age 61. Consider two teachers, one man and one woman, retiring at age 61. Suppose each is entitled to a \$1,000 per month pension, and that each has a spouse the same age. If each wish to have the pension continue to his or her spouse after death, the man has to accept a retirement allowance of about \$790 per month. The female retiree, electing

a male beneficiary is reduced to approximately \$890 a month. Thus, at present, a woman gets about \$100 per month more than a man under these circumstances.

Incidentally, the reduction is greater for men than for the women, even though a much higher percentage of the men elect this kind of option than women. This is at least some confirmation of the basic fairness of our present approach.

Now, let me explore the possibilities open to us and discuss the dilemma we are facing in trying to conform to a requirement of factors which are gender neutral. Let me first of all assume that there will be no retroactive application of this requirement. I will come back to the particularly onerous effect of retroactivity, but our problem is probably easier to understand if we only deal with future retirees.

For future retirees, we have the choice of making a shift to sex-neutral tables with no cost to the state, or eliminating benefit options that have an adverse effect, or perhaps a little of both.

If there is to be no cost to the state, each teacher's benefit in my example would be somewhere between \$790 and \$890. The actual benefit would have to be a form of weighted average to reflect the relative proportions of men and women who will choose the option. At the present time about 70 percent of the teachers who choose the option are men. Thus, a weighted average would be about \$820 per month, if we can count upon the same proportions of men and women choosing the options in the future as has been the case in the past. This approach would be cost-neutral as far as California taxpayers are concerned. Note, however, what it would do to our teachers. For the men it would give an unexpected windfall in the form of a modest increase (3 to 4 percent) in the retirement allowance they would be getting compared to what they would otherwise expect. For women teachers, on the other hand, there would be a much bigger reduction (9 to 10 percent) in the benefit. Undoubtedly this would change the proportion of men and women who choose the option, with more men being attracted to the option and fewer women. As a result, our factors would probably have to be chosen to be more heavily weighted towards the \$790 figure. The closer we get to the men's factor, the less attractive the option becomes to the women and a vicious circle is likely to be established.

In any event, regardless of the proportion of men and women who choose the option, the average man will be getting a benefit which is more than his money's worth. A woman, on the other hand, will clearly be getting a benefit which is less than her money's worth. Looking at future teachers only, we expect the overall effect of this to be a shifting of value which is measured in billions of dollars. In other words, the adoption of unisex factors for California teachers, if it is not to be translated into an additional tax burden for California taxpayers, will require a transfer of values from women teachers to men teachers.

This introduces another possibility which adds to our difficulties. Adoption of unisex factors for public employees which disadvantages any particular group is bound to increase the potential for litigation by the disadvantaged group. It does not seem unreasonable to present a scenario where our women teachers will sue the state for having their benefits unfairly reduced as a result of this legislation. If the system should lose such a suit, the option of choosing between the state picking up the tab, and the cost being spread out among the employees is lost—the taxpayers will foot the bill.

And what is the cost? Basically, it is how much it would take to increase the benefits for all teachers to what they would be if all teachers were female. In the specific example I have been using, this means that the monthly benefit for all teachers will be \$890, whether the teacher is male or female. Presumably this will not increase the number of women teachers who choose the option since their benefit has not been increased at all by this. However, it is likely that the vast majority of men will find this a very attractive option, since it is an increase in their basic benefits of nearly 13 percent. Thus, the men teachers end up with a very substantial increase in benefits as a result of this, and the women teachers end up with no improvement at all in benefits.

Our actuaries have estimated that the actuarial present value of this, if paid for by California Taxpayers, will be \$2.4 billion, without retroactive application. Although California is a populous State, even for a State our size, \$2.4 billion is a lot of money. As a result, it may well be that the pressures to reduce benefits for teachers will increase, and certainly future cost-of-living increases for retirees will be in jeopardy. This might well lead to a reduction in benefits for everyone, so as to make up the difference in cost. This would complete the circle, except that again the women teachers would be the losers in the process. The men teachers would get an improved option factor to apply to a reduced benefit, whereas the women would get the same benefit reduction factor applied to a reduced benefit.

Now if that picture is not bleak enough, this bill also would require us to adjust future benefits for present retirants. There is no choice in this case—the benefits must be “topped-up”, increasing the benefits to the “disadvantaged” teacher. Again, it would be the man teacher whose benefit would be increased, but the price tag is somewhat more modest—about \$200 million. Here, though, the impact would be immediate—we would not have time to budget for this. Instead, we would simply have to increase taxes immediately to pay the additional benefits to retired men. They will appreciate it, I am sure, but I find it hard to imagine that they—or particularly the woman, who will get nothing—will understand this is all in the interest of “Fair Insurance Practices”.

CONCLUSIONS

Careful consideration should be given to the options available for implementing the concept of unisex pension benefits. Alternatives to total retroactive application and the “topping-up” provisions must be explored so as not to place undue financial stress on State and local governments.

Unisex tables presently used by State and local pension plans must be “grandfathered” into the law and that newly devised cost-neutral tables will be acceptable under the Act.

The CBO should analyze this Act and prepare a State and local fiscal note under the enabling legislation.

This testimony also represents the position of the National Association of State Retirement Administrators.

Attachments.

MUNICIPAL FINANCE OFFICERS ASSOCIATION,
Washington, D.C.

GENDER-NEUTRAL ANNUITY TABLES

The Municipal Finance Officers Association supports the elimination of discrimination on the basis of race, color, religion, sex, or national origin. The purpose of the Fair Insurance Practices Act and the Nondiscrimination in Insurance Act is to eliminate discrimination in insurance and annuity practices on the basis of sex. The intent of the Acts is laudable, however, they create a severe financial burden for state and local funds.

In recent years, many state and local pension plans have adopted unisex tables for determining future benefit payments. This practice results in the calculation of equal benefit payments regardless of gender. However, for those plans that have followed the standard insurance practice of basing annuities on sex-distinct tables, provisions of the Acts could have serious cost ramifications.

While the MFOA supports nondiscriminatory policies, it is concerned with the potential cost of the “topping-up” provision which would require retirement benefits to be brought up to the level payable to the favored sex and the retroactive application of equalization of benefits.

The MFOA does not oppose the intent of the Acts, however, the Association does not support any provisions which would jeopardize the solvency of state and local pension plans and the benefits of their members.

The Municipal Finance Officers Association (MFOA) calls on the United States Congress to direct the Congressional Budget Office (CBO) to prepare a cost estimate as authorized under PL 97-108, the State and Local Cost Estimate Act of 1981, to determine the fiscal impact of the proposed Acts on state and local governments. Further, the MFOA opposes any retroactive application or provision of the proposed bills that would result in burdensome increases in pension plan costs.

Adopted: Committee on Public Employee Retirement Administration.

Approved: Executive Board, March 24, 1983.

STATE TEACHERS' RETIREMENT SYSTEM,
Sacramento, Calif., February 15, 1983.

Hon. BOB PACKWOOD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PACKWOOD: The California State Teachers' Retirement System (STRS) has reviewed the proposed “Fair Insurance Practices Act” legislations as it relates to the utilization of “life expectancy” statistical tables when calculating a “joint and survivor” retirement benefit. The System has no choice but to oppose the proposed legislation because of the prohibitive cost impact on the Teachers' Retirement Fund (TRF).

The consulting actuary to the STRS has estimated a cost of \$2.6 billion to pay "joint and survivor" retirement benefits utilizing "unisex" statistical tables. This cost is based on a "worst case" scenario of raising the male member/female beneficiary statistical tables to be equivalent to the female member/male beneficiary tables and applying the factors to retirees both retroactively as well as prospectively. Expressed as a level percentage of the California certified teacher payroll, the cost of this legislation is equal to 1.45 percent. A payroll estimated at \$7.2 billion in 1983-84 the first year with cost of this proposal would be \$104 million.

Considering the fact that the TRF has an unfunded obligation of \$14 billion and has an annual contribution deficit of 6.04 percent of payroll, this legislation would cause irreparable damage to the already critical condition of the TRF.

On behalf of the Teachers' Retirement Board, I urge you to consider exempting state and local retirement plans from the proposed legislation.

Sincerely,

MICHAEL N. THOME,
Chief Executive Officer.

OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM,
Portland, Oreg., March 24, 1983.

Hon. BOB PACKWOOD,
Senate Office Building,
Washington, D.C.

DEAR SENATOR PACKWOOD: We wish you to be aware that S 372/HR 100 requiring that unisex actuarial retirement factors be utilized, and recalculation made where sex-distinct factors were formerly used, will lay a heavy financial burden on the over 792 participating employers in the state of Oregon's public retirement trust.

The Oregon Public Employees Retirement System with 137,000 active and 40,000 retirement members converted to unisex benefit tables in 1978. However, no retirement benefit has ever been made legislatively retroactive and so recalculation was never considered.

To now use the unisex factors, retroactively, where for the opposite sex it would result in a higher benefit, would increase our unfunded liability \$33-\$40 million, requiring an additional 0.10 to 0.15 percent increase in our present employer rates; currently at 12.17 percent of payroll.

Our actuary, Milliman and Robertson, Inc., in a letter of evaluation, dated March 9, 1982, says:

"The System now uses 'unisex' factors in computing all benefits for new retirees. However, the bill would require increases in two types of benefits payable to members who retired before the 'unisex' factors were adopted. For women in that group, the portion of the benefit purchased by member contributions would be raised to the level provided by the male annuity purchase rates, about a 12 percent increase, on the average. Men who retired under options 2 and 3 would have their benefits raised to the level provided by the female conversion factors. On the average, affected option 2 benefits would increase by about 22 percent; option 3 benefits, by about 11 percent.

"Based on the December 31, 1979, actuarial valuation, we estimate the recomputations would trigger an \$8-\$10 million increase in the actuarial present value of benefits for female retirees and a \$25-\$30 million increase in the actuarial present value of benefits for male retirees and their survivors. Assuming all those survivors are female, the total increase in actuarial present value of benefits can be analyzed by sex of recipient, as follows:

[In millions of dollars]

	Men	Women	Total
Retired women.....		8-10	8-10
Retired men and their beneficiaries	18-20	7-10	25-30
Total.....	18-20	15-20	33-40

"All of the recomputations would require a substantial effort by your (PERS) staff. We have not attempted to estimate the administrative cost involved, but we are confident it would be significant."

We estimate conservatively with our present limited data capabilities that under our final average salary—full formula—defined benefit plan there exists at least 4½ person years of reviewing and recalculating to meet the retroactive requirements.

We seek your support, first, in eliminating the retrofeature inasmuch as Oregon Courts have consistently upheld the contractual theory of employment—in considering fringe benefits. Secondly, at least, if nothing else can stay recalculation, then as much later a date of accomplishment than, 90 days after becoming effective, must be considered or chaos will result for us.

In these times of economic difficulty, to now saddle Oregon's trust with such a substantial burden when in truth it creates new unforeseen contractual rights and benefits the females clearly less than the males, seems incongruous, illogical and almost unconscionable.

The billions of dollars that would be here utilized (contrary to agreed contractual terms) would seem to be much better used in almost any more appropriate area of general benefit increases.

As it would affect our membership, employers and employees, this legislation could almost be entitled the "Unfair Insurance Practice Act" or maybe even better, the "Discrimination in Insurance Act."

Sincerely,

JAMES L. MCGOFFIN, *Director.*

DEPARTMENT OF MANAGEMENT AND BUDGET,
Lansing, Mich.

The Michigan Municipal Employees' Retirement System Board of Trustees adopted the following resolution at their board meeting held February 18, 1983:

Whereas, Senate Bill 372, known as the Fair Insurance Practices Act, has been introduced in Congress by Senator Packwood, and

Whereas, this bill affects insurance plans, defined contribution plans and defined benefit plans in public retirement systems, and

Whereas, the Michigan Municipal Employees' Retirement System consisting of 335 participating municipalities and 30,000 active members would be affected by this legislation, and

Whereas, the Michigan Municipal Employees' Retirement System has already adopted 'Merged-Gender Tables', and

Whereas, the retroactive and topping-up provisions would impose additional costs upon member local units of government who are already experiencing grave financial crisis, now therefore be it

Resolved, that the Board of Trustees of the Michigan Municipal Employees' Retirement System hereby expresses its opposition to the retroactive and topping-up provisions of Senate Bill 372 and requests Senator Packwood to seek an amendment to the bill striking the retroactive and topping-up provisions, or exempting State and Local Government, and

Be it further resolved, that copies of this resolution be sent to Senator Packwood, Rep. Dingle, Rep. Florio, and the Michigan Delegation.

Respectfully submitted,

JOHN W. FONGER, *Manager.*

GABRIEL, ROEDER, SMITH & CO.,
ACTUARIES AND CONSULTANTS,
Detroit, Mich., March 25, 1983.

Mr. RICHARD L. BEERS,
Director, Bureau of Retirement Systems,
Lansing, Mich.

DEAR DICK: We have prepared estimates of the cost, to Michigan public employee retirement plans, associated with the proposed Fair Insurance Practices Act (S. 372). The estimates are based upon information concerning public employee retirement plans in Michigan for which we prepare annual actuarial valuations. More than 90 percent of all public employees in Michigan are included in the membership of these plans. The information gathered has been projected to provide cost estimates based on all Michigan public employees.

The estimates include potential costs associated with early retirement provisions and selection of optional forms of benefits in defined benefit plans as well as lifetime benefits in defined contribution plans (money purchase plans). We have not addressed potential costs associated with automobile, life, health or disability insurance or deferred compensation programs for persons also covered by a retirement plan. We have not included any recognition of potential changes in patterns of retirement or selection of optional forms of benefit which might result from the passage of S. 372.

We have reviewed four possible versions of the final effect of S. 372. Other possibilities exist. Which circumstances will prevail is dependent upon the final interpretations of the law and upon the effect, if any, of the Michigan Constitution.

Alternative 1

Unisex tables are mandated only for persons retiring in the future. The unisex tables are to be based on average male-female experience.

Alternative 2

Unisex tables based on average male-female experience are mandated for persons retiring in the future. Benefits of past retirants must be recomputed (for future payments only) to be at least as large as they would have been if unisex tables (based on average male-female experience) had been in use at the time of retirement. Benefits to past retirants of the sex-favored group would not be reduced.

Alternative 3

Unisex tables are mandated only for persons retiring in the future. The unisex tables must be based on the sex-favored tables ("topping up").

Alternative 4

Unisex tables based on the sex-favored tables ("topping up") are mandated for persons retiring in the future. Benefits for past retirants must be recomputed (for future payments only) based on the sex-favored tables in use at the time of retirement.

A summary of estimated data concerning Michigan public employee retirement plans is shown below:

Number of active employees	475,000
Annual active member payroll (billion)	\$7.0
Number of benefit recipients	115,000
Annual retirement benefits now being paid (million)	\$550
Present value of these benefits (billion)	\$4.5

The estimated costs associated with Alternatives 1-4 are shown below. The costs are shown both as lump sum amounts (present value of potential additional benefits) and first year increased contribution requirements. The latter should be viewed as lower limits since they reflect interest-only financing of additional actuarial accrued liabilities. As an item of general interest, we have also shown the potential additional first year benefit payout for past retirants.

[Dollar amounts in millions]

	Alternative 1	Alternative 2	Alternative 3	Alternative 4
Potential additional first year benefit payout to past retirants	0	\$3	0	\$15
Present value of potential additional benefits:				
Future retirants	0	0	1,400	1,400
Past retirants	0	25	0	130
Potential additional first year contribution requirement:				
Dollar amounts	0	.5	28	30
Percent of active employee payroll	0	0.007	0.40	0.43

There are significant costs involved in increasing the benefits of past retirants. The really large costs, however, are in the "topping up" for future retirements.

Keep in mind that these are ballpark estimates. Further refinement would be a large project.

Sincerely,

ALAN E. SONNANSTINE.

The CHAIRMAN. Frank.

Senator LAUTENBERG. I have nothing. Thank you, Mr. Chairman.

The CHAIRMAN. Gentlemen, thank you very much.

Yes, sir, Mr. Day.

Mr. DAY. Mr. Chairman, if I could, there is one other, I think, very telling issue, which is that S. 372 as written limits what can be sold. It does not limit what can be purchased. And through the

use of off-shore and other vehicles, I think there is a serious danger that anyone wishing to evade this measure in whatever form it ultimately passes could, depending on the mix of their employees, for group insurance products primarily, be tempted to use such vehicles, and that should be limited for a variety of reasons.

The CHAIRMAN. That is exactly the reason we have people like you come and testify. I do not think we thought about that.

Mr. DAY. I have about 30 more, too, but I will put them in writing and send them in.

The CHAIRMAN. You will be amazed at how often we go through days and days of witnesses and never have a witness bring up a point. That is an error, nothing malicious, nothing we are particularly ignorant about. Just no one thought about it, and it slips into the law, and there it is. And then you have a dickens of a time undoing what was never intended.

Mr. DAY. We are extremely sensitive to that. Thank you.

The CHAIRMAN. Coming from Utah, I understand that.

Mr. DAY. Beyond that.

The CHAIRMAN. Thank you very much.

The hearing is adjourned.

[Whereupon, at 12:50 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

FAIR PRACTICES INSURANCE ACT

MONDAY, APRIL 25, 1983

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The committee met, pursuant to notice, at 9:30 a.m., in room SR-253, Russell Senate Office Building, Hon. Bob Packwood (chairman of the committee) presiding.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. The committee will come to order, please.

This is the second in a series of hearings in this Congress on the issue of whether or not we should prohibit sex discrimination in the sale of insurance of all kinds—life insurance, auto, health, and other.

Today's hearing is principally devoted to automobile insurance. We by and large do not quarrel with the mathematical statistics that most of the insurance industry presents. I realize that even from the same set of figures different people can draw different conclusions, but what this committee is more specifically concerned with is whether or not we should continue to allow sex-based tables for the sale of insurance.

Even if the argument can be made that some women live longer than men and some women have fewer automobile accidents than men, the issue is should people be judged on their individual merit rather than lumped together as a class for purposes of the sale of insurance.

The tendency of the Congress over the past years in terms of civil rights has been to say that people should be judged on their individual merit rather than lumped together as a class and judged as part of the class, and that is basically the substance of what these hearings are about.

Let me ask unanimous consent to place in the record the opening statement of Senator Goldwater.

[The statement follows:]

OPENING STATEMENT BY SENATOR GOLDWATER

Mr. Chairman, I appreciate the in-depth hearings the committee is holding on the subject of sex classification in setting fees and benefits under insurance policies.

AS I understand it, no one is accusing the insurance industry of deliberately penalizing women on account of their sex. Indeed, the record shows that women benefit from being classified as safe drivers. Also, women pay lower life insurance premiums because of favorable life expectancy records for their sex.

Thus, I cannot recognize the need for Federal action on this matter. This is not a civil rights issue requiring uniform, national action to control practices which

punish or injure women because of their sex. This is an effort to impose theoretical purity to the methodology of the insurance field, regardless of the absence of deliberate bias against women. In my opinion, we should uphold the essence of the Federal system and the precedent of the McCarran Act by leaving this aspect of the insurance business to be regulated by the States. We should not preempt traditional State responsibilities where there is no record of unfair, harmful treatment of women, merely the objective use of actuarial data and other statistics, such as automobile accident records, compiled and interpreted without any bias.

Mr. Chairman, in order to contribute to the development of the hearing record, I ask that a study prepared by and on behalf of six different insurance organizations be included in the published record.¹ The study examines, point-by-point, the claims made for S. 372, and its predecessor, S. 2204, and sets forth a reply to each claim.

The CHAIRMAN. Our first witness today is Ralph Neas, the executive director of the Leadership Conference on Civil Rights. Good morning, Ralph.

STATEMENT OF RALPH G. NEAS, EXECUTIVE DIRECTOR, LEADERSHIP CONFERENCE ON CIVIL RIGHTS

Mr. NEAS. Good morning, Senator.

Mr. Chairman, I am the executive director of the Leadership Conference on Civil Rights, a broad-based coalition of 165 national organizations representing Blacks, Hispanics, women, labor, the disabled, senior citizens Asian Americans, Native Americans, and religious groups.

I would like to thank the committee for convening these early hearings on S. 372 and for allowing us the opportunity of testifying today to express our strong support. For the enactment of this legislation, along with other essential components of the Economic Equity Act, is one of the conference's top legislative priorities in the 98th Congress.

Over the past three decades, the Leadership Conference has worked with the Congress to enact landmark civil rights legislation premised on the principle that no individual should be discriminated against because he or she belongs to a racial, sexual, religious or ethnic group.

These laws prohibit discrimination in voting, employment, education, housing and credit. And yet, to date, the Congress has failed to extend basic civil rights protections to the area of insurance, despite the existence of pervasive and persistent discrimination in that industry. It is past time to close this unconscionable gap.

Without question, overt sex discrimination is widespread in the insurance industry, affecting the availability, the terms, the conditions, the rates, and the benefits of insurance. These inequities have a devastating impact on millions of women and their families, whose need for affordable insurance protection is greater now than ever before.

Indeed, women need insurance to provide financial security for their families in the event of death, sickness, old age, or disability. Yet, the insurance industry continues policies and practices which impede or altogether deny them the ability to obtain this protection.

Although blatant forms of race discrimination generally no longer exist in the insurance industry, there is still substantial dis-

¹ See p. 335.

crimination of a more subtle nature. The most common and damaging form is the practice of redlining, which essentially means if you live in a racial ghetto it is extremely difficult to get insurance. This applies not only to homeowner's insurance, but also to auto and business risk insurance.

While my principal purpose here today is to present the coalition's case on behalf of S. 372, I would be remiss in my responsibilities if I did not also take this opportunity to criticize the present lobbying campaign of certain segments of the insurance industry.

Regrettably, this lobbying effort has been characterized by distortion and by deception. Indeed, the assertions that the present discrimination is fair, that the passage of the Fair Insurance Practices Act would adversely affect women financially, and that it would bankrupt the insurance industry, are patently false.

To cite one egregious example of unfair and misleading lobbying, opponents of S. 372 are now sending letters to Members of Congress stating that the bill would substantially increase automobile rates for younger women, up to 400 and 500 percent. Such a misuse of statistics is reprehensible.

For, according to studies recently verified by the General Accounting Office, "the average premium paid by 23-year-old women under the mileage-rated unisex rating plan would be about the same as the premiums they current pay under sex-distinct rates." Moreover, other studies indicate that if we use mileage as a risk classification factor, women over 25 would actually spend 20 percent less on the average than they now pay.

Unfortunately, some insurance companies have also used statistical manipulation to project enormous costs for the implementation of S. 372. But these wildly inflated figures have been decisively refuted. Indeed, the Department of Labor study shows that some of the industry estimates are off by as much as a factor of 10.

We hope that these scare tactics presently employed will be abandoned immediately and that everyone in the insurance industry will join us in working on behalf of this vital legislation.

Mr. Chairman, for too long we have tolerated the insurance industry's practice of imposing group discrimination upon people because they share a common, immutable characteristic, when in virtually every other major segment of society we have demanded that people be treated as individuals. We cannot continue to allow the insurance industry to enjoy what amounts to an exemption from this Nation's fundamental equal protection principles. The Leadership Conference on Civil Rights urges the expeditious enactment of S. 372.

[The statement follows:]

STATEMENT OF RALPH G. NEAS, EXECUTIVE DIRECTOR, LEADERSHIP CONFERENCE ON CIVIL RIGHTS ON S. 372

Mr. Chairman and members of the Committee, my name is Ralph G. Neas. I am the Executive Director of the Leadership Conference on Civil Rights, a broadbased coalition of 165 national organizations representing, Blacks, Hispanics, women, labor, the disabled, senior citizens, Native Americans, and religious groups. I would like to thank the Committee for convening these early hearings on Senate Bill 372 and for allowing us the opportunity of testifying today to express our strongest support. For the enactment of this legislation, along with other essential components of

the Economic Equity Act, is one of the Conference's top legislative priorities in the 98th Congress.

NEED FOR SENATE BILL 372

Over the past three decades, the Leadership Conference has worked with the Congress to enact landmark civil rights legislation premised on the principle that no individual should be discriminated against because he or she belongs to a racial, sexual, religious, or ethnic group. These laws prohibit discrimination in voting, employment, education, housing, and credit. Yet, to date, the Congress has failed to extend basic civil rights protections to the area of insurance, despite the existence of pervasive and persistent discrimination in that industry. It is past time to close this unconscionable gap.

Without question, overt sex discrimination is widespread in the insurance industry, affecting the availability, the terms, the conditions, the rates, and the benefits of insurance. These inequities have a devastating impact on millions of women and their families, whose need for affordable insurance protection is greater now than ever before.

The role of women in our society has changed dramatically, with women now constituting over half of the workforce. Women are currently entering the labor force at a rate of almost 2 million each year. It has been projected that before the turn of the century, 95 percent of all women aged 16 and over will be working.

Moreover, the vast majority of these women are working out of economic necessity—to support themselves and their families in these economically troubled times. Like their male counterparts, they need insurance to provide financial security for their families in the event of death, sickness, old age, or disability. Yet the insurance industry continues policies and practices which impede or altogether deny them the ability to obtain this protection.

DISABILITY INSURANCE

Discrimination in disability insurance perhaps provides the most vivid example of the insurance industry's failure to fully recognize the economic importance of the work women perform. Rather, the industry continues to embrace the outmoded stereotype of women as those who work as a mere diversion, to be given up at the first opportunity if disability insurance is available. Thus women still suffer discrimination with regard to the availability, cost and terms of disability insurance, even though such coverage is essential to protect against economic loss due to inability to work.

Homemakers, who make a valuable economic contribution through jobs performed in the home, are generally unable to obtain disability insurance. Other occupations with high proportions of women, part-time workers, domestic workers, and waitresses, have very limited access to disability insurance.

Even where women can obtain disability insurance, they will pay more for it than men. According to a survey conducted in Pennsylvania, ten out of thirteen insurance companies charged higher premium rates to women. Another study conducted in New York showed that women were paying rates 150 percent higher than men.

Similarly, the scope of benefits is generally inequitable. Waiting periods—the number of days an insured must be disabled before receiving benefits—are frequently longer for women, while benefit periods—the time during which the insured is paid benefits—and basic periods—the time during which an insured is deemed disabled—are shorter.

HEALTH INSURANCE

In the area of health insurance, women frequently pay higher rates than men for identical coverage, even though claims for accident coverage are actually greater for men. A 1975 survey of seven insurance companies in Illinois showed that on the average, women pay 68 percent more than men, while another study conducted in Iowa showed that women paid as much as 50 percent more. In addition, underwriting practices continue to be based on the assumption that women are dependent upon their husbands. For instance, the father's insurance policy is often assumed to be the primary policy when benefits are claimed for dependent children, even though the mother's policy might provide more extensive coverage. In other cases, a wife must prove that her husband is financially dependent upon her before she can cover him under her insurance.

Finally, while the 1978 Pregnancy Act requires that pregnancy and related conditions be treated as other disabilities in employee group health insurance policies,

individual and private group policies still routinely exclude maternity coverage. The insurance industry seeks to justify this practice, in part, by characterizing pregnancy as a voluntary condition. This rationale ignores the fact that 12 percent of births are unwanted and in the case of Black mothers, the figure is over 25 percent. It also ignores the fact that other "voluntary" disabilities such as vasectomies, cosmetic surgery, as well as sports injuries are generally covered.

LIFE INSURANCE AND PENSION BENEFITS

Sex discrimination in the area of life insurance and pension benefits centers on the prevalent use of sex-based actuarial tables to set rates and benefits. Because women, on the average, live longer than men, all women receive smaller monthly pension benefits than men who have paid identical premiums. Women do enjoy a slight advantage over men in one area: men must pay higher premiums for the same amount of life insurance, or get lesser amounts of insurance coverage for the same premium. Ironically, however, since most men designate women as their beneficiaries, the impact of men taking smaller amounts of insurance falls on women. It is also interesting to note that while insurance companies adhere strictly to mortality statistics in determining monthly annuity benefits, where, women are disadvantaged, they take into account only about one-half of the difference in average life expectancy in establishing life insurance premium rates, where, women enjoy an advantage.

Another inequity women face in this area concerns the "waiver of premium option," a provision which eliminates the need for premium payments during disability. In most plans, men will automatically qualify for this benefit, while women must demonstrate their need. Also, under some life insurance policies, a married woman can purchase coverage only up to the amount of coverage held by her husband, though such limits are never placed on men.

RACE DISCRIMINATION IN INSURANCE

The insurance industry, of course, used to also use explicit race classifications in determining rates and benefits. The industry gradually discontinued this practice after a number of states enacted laws prohibiting it. Nevertheless for several years, companies continued to underwrite policies more strictly for Blacks and sought to discourage the issuance of insurance to Blacks, for instance, by paying no commissions to agents on policies sold to Blacks.

Today, such blatant forms of race discrimination no longer exist in the insurance industry, though unfortunately they have been replaced by widespread discrimination of a more subtle nature. The most common and damaging form is the practice of "redlining" or "territorial classifications" which essentially mean that if you live in a racial ghetto, it is extremely difficult to get insurance. For many minority families living in inner cities, this practice has prevented them from getting adequate homeowner's insurance. And because the availability of such insurance is frequently a necessary predicate to the availability of financing, the practice has also prevented them from securing mortgages to buy adequate housing.

But redlining, of course, is not confined to homeowners insurance. It applies equally to other types of insurance, such as auto and business risk insurance. Nor is racial discrimination in insurance confined to the practice of redlining. Other forms of discrimination include the use of "occupational categories"—both for underwriting and rating purposes—which often times work to the disadvantage of minorities. For example, some insurance companies consider unskilled manual laborers a high risk for auto insurance, despite the absence of objective data showing that workers in these occupations have greater losses.

I would encourage the Committee to closely study the extensive testimony on insurance redlining presented over the past several years to the House and Senate Judiciary Committees during hearings held on legislation to strengthen the Fair Housing Act. A 1979 multi-state report of Advisory Committees to the United States Commission on Civil Rights entitled "Insurance Redlining: Fact, Not Fiction" also includes much helpful information on the more subtle forms of racial discrimination still prevalent in the insurance industry.

RESPONSE TO INDUSTRY ARGUMENTS

Before concluding, I would like to briefly respond to some of the arguments the insurance industry has set forth in opposition to S. 372. The central argument of the insurance industry has been that fundamental civil rights policy cannot be extended

to insurance because losses must be predicted in advance, and sex is a legitimate predictor of losses.

There are a number of fallacies in this argument, the most obvious being that if sex is a legitimate predictor of loss, then so is race, religion, or ethnic background. For instance, Jews under 65 have a shorter life expectancy than the average population; Blacks have a shorter life expectancy than do Whites.

No one, of course, in the insurance industry seriously contends that it would be legitimate to predict loss on the basis of the race or religion of the insured. Some in the industry have sought to come up with awkward explanations to distinguish race from sex classifications by asserting for instance that racial differences are attributable to socioeconomic conditions, whereas differences between the sexes are "biological".

But the truth is that there are no such differences. Both forms of discrimination impose group discrimination on an individual because of an immutable characteristic, even though that characteristic is not causally related to actual risk of loss. Race-segregated tables are no longer used by the industry because it has bowed to the consensus that they are morally wrong. However, the use of sex-segregated tables is just as offensive, the industry simply refuses to acknowledge that fact.

Moreover, it has been shown that there are a number of non-discriminatory factors which the insurance industry may rely upon and which are more relevant to predict loss. Weight, physical condition, personal and family history, occupation, habits, residence, smoking, and exercise patterns have all been used to predict life expectancy in the sale of life insurance. Similarly, automobile insureds can be grouped by factors such as past traffic offenses, accidents, claims, kind of automobile, number of miles driven, driving experience, education and age. The only advantage which "sex" has over the use of these other predictors is that it is easier to apply. However, our civil rights policies have never permitted "simple convenience" to serve as an excuse for invidious discrimination.

The insurance industry has also claimed that Congress' authority to enact this legislation is limited by the McCarran-Ferguson Act. The McCarran-Ferguson Act sets forth a general policy in support of state regulation of the business of insurance. Nothing in it prevents Congress from enacting statutes which address insurance issues.

In any event, there is nothing about this bill which is inconsistent with the policy behind the McCarran-Ferguson Act. The goal of this legislation is to prohibit discrimination, not to regulate insurance. Previously enacted civil rights statutes have not displaced state regulation of industries traditionally subject to state control. Title II of the 1964 Civil Rights Act has not, for instance, displaced state regulation of hotels and restaurants. This legislation will affect the insurance business in the same way.

Finally, much has been said about the costs of this bill, the most controversial being those associated with requiring that individuals not be discriminated against upon the date of enactment with regard to retirement, annuity, and pension benefits. The effect of this requirement is that the industry must "top-up" or bring the benefits of the discriminated sex up to the amount paid the favored sex. The industry cost estimates of this so-called "unfunded liability" in the last Congress ranged from 2 billion dollars to 5.5 billion dollars, compared to industry assets and reserves of over \$400 billion.

The Leadership Conference concurs with the conclusion of the 1982 Senate Commerce Committee Report that this industry cost data substantially overstates the likely cost of providing equal benefits, though I note parenthetically that even if the estimate were accurate, they represent only a tiny fraction of the industry's total assets and reserves. It is hoped that in this Congress, accurate and reliable cost figures can be obtained. We are confident that these costs will prove to be a small price to pay for extending basic civil rights guarantees to the millions now discriminated against in the insurance industry.

The industry has also argued that prohibiting discrimination in insurance will cause the subsidizing sex to quit buying insurance and that the use of gender-neutral tables will materially impair insurer's financial strength. These arguments were also made when the states began prohibiting race-based tables and they proved to be unfounded. Whites continued buying insurance and the industry remained financially sound.

Finally, the industry has argued that banning race, sex, and religious discrimination will lead to the prohibition of all insurance classifications. This is simply not true. The categories of discrimination prohibited in the bill include only those where there has been an historic pattern of invidious discrimination. It is not intended and will not affect other insurance rating practices.

CONCLUSION

Mr. Chairman and members of the Committee, this legislation has now languished in the Congress for over a decade. For too long we have tolerated the practice of the insurance industry of imposing group discrimination upon people because they share a common, immutable characteristic, when in virtually every other major segment of American society, we have demanded that people be treated as individuals. We cannot continue to allow the insurance industry to enjoy what amounts to an exemption from fundamental equal protection principles. We urge the expeditious enactment of Senate Bill 372.

The CHAIRMAN. Mr. Neas, one of the principal questions we will face today is the argument of the automobile industry that they should be exempt from this bill and they made an effort to be exempt from the House bill. As you know, it failed on the subcommittee level, and unless I miss my guess, they may be the principal segment of the insurance industry that asks for the exclusion, because I think we are going to reach, my hunch is, a compromise on the life insurance parts that will be acceptable to both the women's groups arguing for this bill and the insurance industry.

What is your position, therefore, on whether automobile insurance should be taken out?

Mr. NEAS. Mr. Chairman, I think that unfortunately the automobile industry has been providing Members of Congress, the public, and the press with very misleading statistics. You have had witnesses, including Mr. Bob Hunter, testify that if you eliminated sex as a risk classification and substituted another characteristic, for example, mileage, young women between 18 and 25 would not be paying more in premiums.

That study has been corroborated just recently. A letter dated April 18 to Congressman Florio from the General Accounting Office verifies the studies done by Mr. Hunter. Other studies indicate that if mileage was used as the classification factor, women over 25 would be paying 20 percent less with respect to their automobile premiums. So I think it is clear that there should not be an exemption.

Of all of the issues before the Congress, I think the one that Congress could immediately dispense with is the argument that automobile rates will go up for women.

The CHAIRMAN. As you are aware, there is a similar study in New Jersey, an attempt to rebut it by the automobile industry, and then a surrebuttal by the New Jersey Commission. That is an example of where I have said you can take statistics and bend them to where you want using the same statistics. But indeed the New Jersey study comes up roughly with the same conclusions the GAO comes out with.

Mr. Neas, I have no more questions. I appreciate your coming.

Mr. NEAS. Thank you, Mr. Chairman.

One factor I would like to respond to that you mentioned, regarding a possible compromise, I think the Leadership Conference on Civil Rights, along with all of the groups working on behalf of S. 372 would oppose a compromise. We feel very strongly that the industry has presented figures about as misleading with respect to the cost of implementation as are the figures with respect to the automobile rates.

I have mentioned the Department of Labor study which shows that some estimates are off by as much as a factor of 10. We would certainly like to see the committee continue its exhaustive study with respect to what would be the correct statistics, but we feel once that study is concluded it would corroborate your bill. And once every Member of Congress understands that, we think the bill will pass without amendment.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Next we will move to a panel: Ms. Evelyn Dubrow, the vice president and legislative director of the ILGWU; Prof. Lea Brilmayer of Yale Law School; and Mrs. Juanita Hunter, assistant professor, State University of New York and chair of the Cabinet on Human Rights of the American Nurses Association.

Good morning, Evelyn, do you want to start?

STATEMENTS OF EVELYN DUBROW, VICE PRESIDENT AND LEGISLATIVE DIRECTOR, INTERNATIONAL LADIES GARMENT WORKERS UNION; PROF. LEA BRILMAYER, YALE LAW SCHOOL; AND JUANITA HUNTER, ASSISTANT PROFESSOR, STATE UNIVERSITY OF NEW YORK AND CHAIR, CABINET ON HUMAN RIGHTS OF THE AMERICAN NURSES ASSOCIATION

Ms. DUBROW. Thank you, Senator Packwood.

I would like to say today that I am wearing several additional hats. I hope you will forgive me. I have been asked not only to represent the International Ladies Garment Workers Union but the Service Employees International Union and the Association of Federal, State, County and Municipal Employees, along with the Coalition of Labor Union Women.

I think the Service Employees and AFSCME will probably be submitting statements for the record, but they wanted to be sure you knew they were in support of the Fair Practices Insurance Act and make sure that the record showed this this morning.

The CHAIRMAN. Are you also speaking generically for the AFL-CIO?

Ms. DUBROW. Yes, I am. I understand the AFL-CIO will be sending up a letter in support of this act also.

Mr. Chairman, my name is Evelyn Dubrow. I am vice president and legislative director of the International Ladies Garment Workers Union and a vice president of the Coalition of Labor Union Women. On behalf of both the ILGWU and CLUW, I would like to voice our strong support for S. 372, which would prohibit discrimination in the writing and selling of insurance contracts.

Because 80 percent of our 300,000 members are women, the ILGWU is particularly sensitive to the inequities they have faced in obtaining insurance. Women find that not all types of insurance are available to them, and that they can be required to pay different insurance premiums and accept different benefits than their male counterparts.

It has been well documented that women often receive lower retirement benefits than men who have paid the same pension premiums. Women find that they may have to pay higher premiums for disability insurance or health insurance than men, and that

private insurance companies often exclude pregnancy and other sex-related conditions from coverage.

On the other hand, men find that in areas such as automobile and life insurance coverage they may be required to pay more than women for comparable levels of insurance.

My union has always been in the forefront of efforts to change those laws which allow any type of discrimination solely on the basis of sex, religion, race, color, or national origin. We are pleased that laws have been enacted to make such discrimination illegal in areas such as employment, housing, and consumer credit.

We see no reason why it should be allowed to continue in the insurance industry. None of these factors alone is responsible for any individual's lifespan, physical condition, health, driving habits, or employment, and we can see no reason to use any one of them as a sole basis for determining that different types of insurance should be offered at different rates to any group of people. This is completely contrary to our Nation's basic civil rights policy and should be eliminated by means such as S. 372.

In these difficult economic times; insurance is a necessity. Without health insurance, auto insurance, and life insurance, many people could be wiped out financially by a single accident, death in the family, or illness. Laws governing the insurance industry should be equitable, especially because insurance is so important to working Americans and to those who are unemployed.

I am also making this statement in favor of the Fair Insurance Practices Act on behalf of the Coalition of Labor Union Women, which represents women from every international in the AFL-CIO, as well as the International Brotherhood of Teamsters and the United Mine Workers.

CLUW was established in 1974 for the purpose of wiping out discrimination on account of sex, race, creed, or religion, with special concerns for eliminating discrimination against working women. Because so many working women are heads of households or single parents, their need to provide insurance for their families is of particular urgency. Discrimination because of any of these reasons could cause great hardship to them and their families.

Because S. 372, the Fair Insurance Practices Act, is part of the Economic Equity Act, we emphasize our support for the entire Economic Equity Act, as well as for this legislation.

The CHAIRMAN. Thank you.

Professor Brilmayer.

Ms. BRILMAYER. Thank you. I find that the insurance problem is a very curious problem because there are many people who think it would be grossly unfair to pay a man and a woman different salaries for doing the same work, but nevertheless find it completely fair to charge men and women different amounts of money for the same sort of insurance coverage.

Analytically, the problems are exactly the same, but I think the insurance industry has confused this by relying on the statistical concept of expectancy which is, I believe, misunderstood. The concept of statistical expectancy does not have the meaning many people assign to it. People think there is a true life expectancy in the same way there is a true height, weight, or other type of measurement of individuals. That is not the case.

One's expectancy depends upon the way one has been classified. To take an example, if you take a newborn baby you can ask what that baby's life expectancy is. Its life expectancy depends upon how you classify the baby. If it is just a person born in the United States, it has a life expectancy of 70.75 years. If you treat it as a nonwhite person born in the United States, it is 64.95 years, and as a nonwhite male from South Carolina the expectancy drops further to 58.33 years.

Expectancy is no different from any other way that arithmetical averages are used to make predictions. It is no different from an employer who says; "A woman has an expected value less to me than a man, even though her credentials are the same, because my average past experience with women has been that they drop out of the job market after only a few years to have children and they take more time off for sickness."

I would like to demonstrate something about the concept of expectancy with this chart. This is a fairly typical set of figures, hypothetical but fairly typical set of figures based upon life expectancies—the sort of data used to generate insurance company figures.

You can see that there are 500 men in this category who live an average of 14 years after retirement and there are 500 women who live an average of 18 years after retirement. When you look at these figures, you say wouldn't it be wonderful to be a woman? If only I could change myself into a woman I would get 4 more years of life.

Before you decide on a sex-change operation, you should look at the other side of the chart. Here we have the same 500 men and the same 500 women, but we have it broken down. It turns out that 300 of the men are smokers, whereas only 100 of the women are; that 200 of the men are nonsmokers and 400 of the women are nonsmokers. But the smokers live an average of 10 years after retirement and the nonsmokers live 20 years.

Now as you can see, for a man and a woman who are nonsmokers, the figures are the same. For a man and a woman who are smokers, the figures are the same, and I challenge anyone to explain to me in terms of fairness why a man falling in this category should not be treated exactly the same as a woman in that category. Both of them, as a scientific matter, have 10 years left to live.

This is a very typical mistake that is made by people who are unfamiliar with statistics. It is called confusing correlation with causation. I think the industry has relied upon the fact that most of the general population does not understand this and has obfuscated the issue.

Thank you.

The CHAIRMAN. Thank you.

Miss Hunter.

Ms. HUNTER. I am Juanita Hunter of the American Nurses Association cabinet on human rights and vice president of the New York State Nurses Association. I am testifying on behalf of the American Nurses Association.

We welcome this opportunity to present our views on S. 372, Fair Insurance Practices Act. I will highlight our testimony and ask that the full statement be inserted in the record.

The CHAIRMAN. I will say to you and all of the witnesses your entire statements will be in the record and we would prefer you summarize them.

Ms. HUNTER. We strongly support the Fair Insurance Practices Act and believe its enactment into law is long overdue. Fair treatment of individuals in matters of insurance, pensions, and other annuities is a very essential part of the overall economic equality for women.

As an organization representing a profession which is over 97 percent women, the American Nurses Association is increasingly concerned about the policies and practices affecting the economic status of women. Insurance and annuities are an essential part of insuring economic well-being, yet the current insurance and pension systems often work to the disadvantage of both women and minorities.

For well over a decade, the American Nurses Association and its nursing members have been involved in litigation over discriminatory practices in insurance and annuities. In November 1972, ANA filed nine separate sex discrimination charges in various district offices of the Equal Employment Opportunity Commission against the Teachers Insurance Annuity Association and college retirement equity fund.

In all of the charges, without exception, EEOC ruled in favor of ANA. However, when EEOC's efforts failed to promote resolution through conciliation of the dispute, ANA filed suit against the University of North Carolina at Chapel Hill and TIAA-CREF. In 1973, ANA participated in a charge filed through EEOC in Detroit by the women faculty of Wayne State University. In this case also EEOC ruled in our favor and allowed us to pursue the matter in court.

The Federal district court in Detroit ruled in our favor. This ruling has been appealed by TIAA-CREF, and a hearing date before the appellate court in Cincinnati is awaiting.

In 1977, ANA filed a charge against the University of Pittsburgh alleging that the university was discriminating against women faculty members by paying them lower monthly salaries and fringe benefits than those paid to male faculty members, which is in direct violation of title VII of the Civil Rights Act of 1964. EEOC is investigating those charges.

In 1973, at the request of the American Nurses Association, the Detroit office of EEOC filed a sex discrimination complaint in relation to the disability insurance sold by TIAA-CREF. That insurance excluded disabilities due to self-inflicted injury, acts of war, and pregnancy. It is easy to understand the exclusions for suicidal attempts and war-related injuries, but why add pregnancy to such a grouping?

In the middle 1970's, TIAA-CREF withdrew its exclusion of disability benefits related to pregnancy. At the same time that TIAA-CREF was offering lower benefits upon retirement because women on the average lived longer than men, some universities were charging the same rate for life insurance that males were being charged.

At some universities it is still not possible for faculty members to obtain maternity benefits and medical and hospitalization insur-

ance without simultaneously insuring her husband. Maternity benefits are not available to single subscribers.

The battle against discrimination in insurance and annuities has been a lengthy one. Women have used Federal laws, Executive orders, State law, and labor law to little avail. S. 372 is needed to provide a clear statement of Federal requirements for the insurance industry. Unless this bill becomes law, Federal and State courts will be involved in litigation of those matters for decades before the issue is resolved.

We reject arguments by the insurance industry against passage of S. 372. The industry argues that women as a group have a longer life expectancy than men as a group, which justifies paying women lesser periodic annuity benefits than men and charging men higher premiums than men on life insurance.

Thank you very much.

[The statement follows:]

STATEMENT OF JUANITA K. HUNTER, R.N., AMERICAN NURSES' ASSOCIATION

The American Nurses' Association is a professional association and labor organization representing the nation's registered nurses. We welcome this opportunity to present our views on S. 372, the Fair Insurance Practices Act, before this committee.

The American Nurses' Association strongly supports the Fair Insurance Practices Act and believes that its enactment into law is long overdue. Fair treatment of individuals in matters of insurance, pensions, and other annuities is a very essential part of overall economic equality. Current insurance practices permit disparate treatment in cost and availability of insurance and in the extent of insurance coverage on the basis of membership in a certain sexual, racial, or ethnic group. These practices have been justified on the basis of the use of separate experience and mortality tables which have been clearly demonstrated to be weak predictors of an individual's actual experience. Moreover, it is clear that the justification for such discriminatory practices—based on the characteristics of a group of individuals—is so fundamentally inconsistent with our nation's civil rights policies, that it can no longer be allowed to continue. It is precisely these practices that S. 372 is designed to prevent.

The Fair Insurance Practices Act will prohibit discrimination in insurance and annuities on the basis of sex, race, color, religion or national origin as to the availability of insurance, the terms, conditions, rates, and benefits of insurance or annuities or any of the requirements of any insurance contracts. It will prohibit practices which result in individual women receiving lower monthly pension benefits merely because, as a group, they have a longer life expectancy than men. It will prohibit higher disability premiums for women based on group experience, and will prohibit an insurer from excluding women's sex-linked disorders from coverage, when such coverage is offered to men. It will prohibit the exclusion of pregnancy and related complications from health insurance coverage when other, so-called "voluntary" conditions are covered for men. It will also prohibit insurance companies from charging men higher premiums than women on life insurance and charging young men higher premiums than young women for auto insurance.

As an organization whose membership is over 97 percent women, the American Nurses' Association is increasingly concerned about the policies and practices affecting economic well-being. Pensions and insurance are an essential part of economic well-being, yet current insurance practices tend to work to the disadvantage of women and minorities, who are otherwise already so disadvantaged under the pension and insurance systems.

ACTIVITIES OF THE AMERICAN NURSES' ASSOCIATION

For well over a decade the American Nurses' Association and its members have been involved in litigation over discriminatory practices in insurance and annuities. In November 1972, ANA filed nine separate sex discrimination charges in various district offices of the Equal Employment Opportunity Commission (EEOC) against the Teachers Insurance Annuity Association and College Retirement Equity Fund. TIAA-CREFs are nonprofit insurance companies specializing in marketing of annuities and pension plans to institutions of higher education. Over 85 percent of all

four year private colleges and over 40 percent of all public colleges have retirement plans offered by TIAA-CREF companies. These plans cover approximately 450,000 employees in about 2,800 institutions. Their annuity and life insurance contracts have been sex distinct, i.e., they use separate life expectancy tables for men and women in determining amounts payable as monthly benefits upon retirement. Under their plan women employees receive smaller monthly retirement benefits than men even though they have made the same contribution for the same length of time as their male counterparts. TIAA-CREF's reason for paying smaller benefits to women employees, has been that women, in general, live longer than men, and hence, women ultimately receive the same total amount of retirement benefits. In ANA's opinion, this practice is a clear violation of the provisions contained in Title VII of the Civil Rights Act of 1964.

In all of the charges, without exception, EEOC ruled in favor of ANA. However, when EEOC's efforts failed to promote resolution through conciliation of a dispute, ANA filed suit against the University of North Carolina at Chapel Hill and TIAA-CREF. Also in 1973, ANA participated in a charge filed through EEOC in Detroit by the women faculty of Wayne State University. In this case too, EEOC ruled in our favor and gave us a letter to release to pursue the matter in court. The Federal District Court in Detroit ruled in our favor but this has been appealed by TIAA-CREF and is awaiting a hearing date before the Federal Appellate Court in Cincinnati.

In 1977, ANA filed a charge against the University of Pittsburgh alleging that the university was discriminating against women faculty members by paying them lower monthly salaries and fringe benefits than those paid to male faculty members, in direct violation of Title VII of the Civil Rights Act of 1964. EEOC is investigating the charges.

In 1973, at the request of the American Nurses' Association, the Detroit Office of EEOC filed a sex discrimination complaint in relation to the disability insurance sold by TIAA-CREF. That insurance excluded disabilities which were due to self-inflicted injury, acts of war and pregnancy. It is not hard to understand the exclusions for suicidal attempts and war-related injuries but why add pregnancy to such a grouping? In the middle 1970's, TIAA withdrew its exclusion of disability benefits related to pregnancy.

At the same time that TIAA-CREF was offering lower benefits upon retirement because women on the average live longer than men, some universities were charging women the same rate for life insurance that males were being charged. It is astounding, but true, that refunds which accrued from the mutual insurance company because of the excess charges to women, were used by a university to purchase maternity benefits for the spouses of male faculty members.

At some universities it is still not possible for a faculty member to obtain maternity benefits in medical and hospitalization insurance without simultaneously insuring her husband. Maternity benefits are not available to single subscribers. We believe there is confusion between the concepts of single marital status and single insurance subscribers. There is no reason for employed women to double insure their spouses in order to have maternity coverage.

The battle against discrimination in pensions and insurance is lengthy. Women have used federal laws, executive orders, state law, labor law—all to little avail. S. 372 and its companion, H.R. 100, is needed to provide a clear statement of federal requirements for the insurance industry. Unless this bill becomes law, federal and state courts will be involved in litigation of these matters for decades before the issue is resolved.

The principal of prohibiting discrimination based upon race, color, religion, sex or national origin is becoming a reality in such areas as employment, public accommodation, housing, credit, government grants, benefits, voting, education—to name a few. A major gap that now remains is in insurance and annuities. A prompt enactment of S. 372 into law will represent a giant step forward in filling this gap. AMA therefore, urges early and favorable action on S. 372.

MAJOR POINTS OF CONTROVERSY SURROUNDING THE FAIR INSURANCE PRACTICE ACT

The insurance industry's strong arguments against this legislation have been generally typical of the arguments used in opposition to other civil rights legislation. This opposition, based on arguments concerning life expectancy differences, the costs associated with the implementation of such legislation, and questions of regulatory authority of the insurance industry, can be rebutted easily.

Life expectancy

The insurance industry argues that because life expectancy is longer for women than men, women should receive lower monthly pension annuity benefits than men. The industry argues that sex is a necessary and appropriate criterion for classifying insurance risk.

However, life expectancy tables reveal that sex is a weaker predictor of life expectancy than many other factors. There is a greater difference in mortality between Mormons and non-Mormons, whites and blacks, smokers and non-smokers, and between residents of different geographic locations, than between men and women. Yet all of these, except sex, are ignored in rate and benefit classification for annuities. As of 1979, for example, only 30 out of 1,800 life insurance companies gave discounts to non-smokers. Furthermore, although women, as a group, have a longer life expectancy than men, as a group, about 86 percent of all men and all women have the same death age. Only about 14 percent of all women outlive most men and 14 percent of all men die earlier than most women. The treatment of individuals on the basis of the characteristics of the group to which they belong is clearly inconsistent with our nation's civil rights policies.

Cost to insurance plans

The insurance industry argues that the elimination of sex discrimination in insurance and annuities will cost the industry billions of dollars and will impair insurers' financial strength and their ability to carry out their long-term obligations.

There is considerable evidence to indicate that the insurance industry has exaggerated the costs of eliminating sex discrimination in insurance. For example, the American Academy of Actuaries estimated that the cost of pension plans would be \$5.5 billion, yet the Labor Department estimated a range of about \$1.2 billion to \$1.6 billion. TIAA-CREF estimated a cost of \$3.2 billion, yet the Labor Department estimated a cost of \$23 million to that plan. In any event, the insurance industry's rate structures have enormous built-in margins to protect the company and will, in most cases, be adequate to carry the insurer's obligations under this legislation. The insurance industry did not charge men and women sex differentiated rates for life insurance before the 1950s. The industry did not go broke then and it is unlikely that it will go broke under nondiscrimination legislation. Moreover, the insurance industry made remarkably similar predictions of increased costs when states were outlawing discrimination in insurance based on race. The absence of discrimination by race has not appeared to impair the insurance industry's financial strength.

Regulatory authority

The insurance industry argues that the legislation would violate the McCarran-Ferguson Act which leaves the regulation of the business of insurance to the states. The legislation, however, would neither federalize insurance regulations nor require uniformity in policy coverage and rates. Instead, it would simply apply the same national civil rights policy to insurance and annuities that the Congress and most state legislatures have already applied to other areas.

Auto insurance

The industry argues that gender differentiated auto insurance premiums are justified because sex is a good predictor of auto insurance risk. It is widely believed that young women have better driving records than young men.

There is ample evidence to reveal, however, that sex is not an accurate predictor of either accident risk or driving performance. Rather, gender is used as a proxy or indirect measure in place of other more direct variables such as mileage driven. It is widely believed that young males are greater accident risks than young females. Young males, however, drive over twice the number of miles as young females. When driving mileage is adjusted for, it has been shown that young females actually have more accidents per miles driven than young men.

Insurance companies claim that abolishing gender classes and using rates based upon gender neutral tables would increase premiums paid by young women by \$700 million. These figures, however, are based on the unrealistic assumption that no new causally related factor would be adopted. All states that have eliminated sex and marital status as rating factors have either mandated that new factors be used or have seen competitive market forces develop new factors. If actuarially sound mileage experience is used in setting unisex rates, rates for young women would be essentially unchanged. Furthermore, if mileage were used to calculate rates for all ages, premiums would fall significantly for women over the age of 25.

CONCLUSION

In summary ANA opposes insurance industry practices that discriminate on the basis of race, color, religion, sex, or national origin. ANA in the past has actively opposed one such practice discriminating against women beneficiaries of the annuity policies issued by TIAA-CREF. ANA has even filed a suit (No. C-75-558-G) in the U.S. District Court for the Middle District of North Carolina. Without prejudice to ANA's contentions in that case, ANA supports the bill S. 372. ANA sees no merits in the insurance industry's arguments against this bill. In conclusion, ANA urges early enactment of the bill S. 372 into law.

The CHAIRMAN. Thank you very much.

Evie, let me go back again and make sure I have in the record who you are testifying for—one, the AFL-CIO.

Ms. DUBROW. Just let me say that the AFL-CIO has advised me that they will be sending a letter up.

The CHAIRMAN. In support of the bill?

Ms. DUBROW. Yes.

The CHAIRMAN. The ILGWU, the Service Employees International Union, and the Association of Federal, State, County, and Municipal Employees.

Ms. DUBROW. And the Coalition of Labor Union Women.

The CHAIRMAN. Coalition of Labor Union Women. Thank you.

Professor Brilmayer, do I pronounce that properly?

Ms. BRILMAYER. Brilmayer.

The CHAIRMAN. Brilmayer. I am sorry.

The basic principle behind this legislation is the right of an individual to be judged as an individual on his or her own characteristics. Do you want to describe the importance of this concept to this country in terms of our traditional civil rights and civil liberties?

Ms. BRILMAYER. The problem with insurance is that insurance characteristically thinks in terms of grouping. There are many types of grouping that really are not very offensive. For instance, if you want to group people together because they drove the same number of miles in their car over the last year, no one finds that offensive from a civil rights point of view.

From the civil rights tradition, the important thing is that no one should be grouped together with other people simply because they happen to be of the same sex, religion, race, or national origin. That is what the principle behind this bill is, as I understand it.

The CHAIRMAN. And gradually we have seen at the Federal level the expansion in those areas. In employment, years ago, we said you can no longer have a category that says chemical engineers—female and chemical engineers—male and pay them different salaries, assuming equal qualifications, although, interestingly, at the time that was adopted that was opposed, by and large, by the principal business organizations.

And credit. I was in this Congress when we passed a law saying you cannot discriminate in credit, although the argument was used statistically that women, especially divorced women, were as a class a worse risk and had to pay more. They could not get credit cards is what it amounted to. They could not get credit cards in many areas.

So I can ask you all. I do not see any difference in what we are contemplating now?

Ms. BRILMAYER. Analytically, I do not think there is any difference. The only difference is that the insurance company is more accustomed to justifying their rates in terms of numbers, and it comes more readily as an explanation that this is what they are doing.

But if you look at the underlying principle, there is no difference between making predictions about how long someone is going to live or how many accidents they are going to have in their automobile in the next year than there is in determining how valuable they will be as an employee or whether they will be successful in medical school or law school and you are making a prediction based upon their past credentials and test scores.

They are all questions of predicting the unknowable, and in all of these situations we find it impermissible to use race, sex, national origin, and so forth.

The CHAIRMAN. It is interesting. In the life insurance field years ago, the life insurance industry used to classify people black and white. As a class, if you lump them all together, blacks do not live as long as whites. The justification of the life insurance industry was that race was a valid classification.

Interestingly, they abandoned that classification on their own, and when I was talking with one of their lobbyists as to why, they said, Senator, we no longer in good conscience could justify that to the public.

Ms. BRILMAYER. I think the explanation has changed a little bit because, in rebuttal to an article I wrote, the answer was given: We cannot do that because it is illegal.

The CHAIRMAN. It may be illegal in a number of States. I do not know what the various State laws might be.

Ms. BRILMAYER. I believe all of the States now prohibit discrimination on the basis of race in insurance. It is just sex that they find permissible.

The CHAIRMAN. I have no other questions. Thank you very much for coming.

Next we will take Mr. John Ingram, who is the commissioner of insurance for North Carolina.

Mr. Ingram, good morning.

STATEMENT OF JOHN INGRAM, COMMISSIONER OF INSURANCE, STATE OF NORTH CAROLINA

Mr. INGRAM. Good morning, Mr. Chairman. How are you this morning?

The CHAIRMAN. I am fine. Thank you for coming up today.

Mr. INGRAM. I notice that whoever is in charge of the elevators here, Senator, is well in advance on motor vehicle complications because the elevator says no trucks allowed in the elevator.

Mr. Chairman and members of the committee, I thank you for inviting me to appear before you today to discuss how we went about eliminating age and sex discrimination in automobile liability insurance in North Carolina and the fruits of that change for the people of my State.

Our North Carolina legislation was a milestone in the history of eliminating discrimination in America as the first State in the

Nation with a reinsurance facility to abolish the assigned risk in age and sex discrimination. The reinsurance facility was a necessary first step because availability must be mandated or guaranteed.

Open rates recommended by insurance companies have not fostered real competition. These companies try to play games with availability. Safeguards are necessary to guarantee availability. I note on page 5 of this bill, Senator, that you have addressed this problem of guaranteeing availability. I have recommended to Congress that McCarren-Ferguson should be repealed in order to make free enterprise work for everyone.

On December 1, 1977, a safe-driving young man who owned his own car was able to purchase his auto liability insurance for \$70 instead of \$240 in North Carolina. On this date I had fulfilled the two campaign promises which I made to the people when I was elected insurance commissioner in 1972. I abolished the assigned risk and age and sex discrimination.

I found that in my campaign for commissioner of insurance that the people of North Carolina were fed up with a system which required a safe-driving young man to pay more for his auto insurance than someone over 25 convicted of drunk driving.

The fight to get where we are today included battles in the court, battles in the general assembly, and battles in the political arena. One of the first things I did after taking office in 1973 was to order an end to age and sex discrimination.

The court said this change had to be accomplished through a new law, so we turned to the general assembly. In 1975 our law was enacted abolishing age and sex discrimination with a safe-driver plan, but the people of North Carolina did not receive the benefit of this law, because of the industry's court challenge, until December 1, 1977.

The actual wording of our law is as follows:

No insurer after September 1, 1975, shall base any standard or rating plan for private passenger automobiles or motorcycles, in whole or in part, directly or indirectly, upon the age or sex of the persons insured.

Mr. Chairman, I would like to point out to you that in a study done, "Insurance and Women in North Carolina," in 1976—the study was done far ahead of that—there were three members of our general assembly who were women on this special task force on sex discrimination in insurance. One of these ladies, the Honorable Jo Graham Foster, is still a member of the general assembly in North Carolina. All three of these ladies supported our law to end age and sex discrimination in auto liability insurance in North Carolina.

For too long our young people and their parents felt the sharp edge of age and sex discrimination, many of whom were veterans of Vietnam. North Carolina's legislation prohibits the use of age and sex in the setting of rates. Many under 25-year-old drivers were paying 2½ times the normal rate because of age and sex, even though they had a safe-driving record.

Our legislation was good because no safe driver received a rate increase. Let me repeat that: No safe driver received a rate increase.

The CHAIRMAN. Let me make sure—pardon me for interrupting. If I take part of your time, I will give you a little longer.

No safe driver, man or woman, regardless of age, received an increase because of this legislation?

Mr. INGRAM. That is correct.

The CHAIRMAN. So you significantly succeeded in shifting the burden onto accident-prone drivers?

Mr. INGRAM. That is correct, that is correct. With a safe-driver plan we, as you said, Senator, shifted the burden to the people causing problems.

The CHAIRMAN. Which is where the burden ought to be. I would think people would have a difficult time quarreling with that conclusion, if you have reached it. I think the argument will be from some of the later panelists that you cannot reach that conclusion. That is why I find North Carolina's experience so interesting.

Mr. INGRAM. Yes. And again, I would like to say, the same kind of claims that I read in something I picked up today from the casualty insurance industry, that women were going to be screaming about this change. I want to point out again to you that our women in the general assembly voted for this change, because it was right and it was fair and, again, because the burden was not shifted to women with good driving records. It was shifted to men and women with bad driving records.

The CHAIRMAN. And as I understand it from your figures, 85 to 90 percent of the people have good driving records.

Mr. INGRAM. Yes. Our legislation was good because no safe driver received a rate increase, and the premium for all safe drivers, which was over 80 percent of the driving population, was slightly less than the existing rate.

One of the Nation's leading actuaries, Dr. Philip K. Stern, reviewed the plan proposed in our new law, which was called House bill 28, and said it was "sound and compatible with ratemaking principles." He also said that the rates under House bill 28 fulfill the statutory requirement that rates be affordable and not excessive.

The chief actuary for the Federal Insurance Administration, Robert Hunter, rejected age and sex as factors for auto insurance. This chief actuary for the FIA rejected age as "broad-brush categorization, guilt by impute, by association." He said that less than 10 percent could possibly cause accidents and it was unfair to ask 90 to 95 percent to bear the burden because of their age and sex. Our motor vehicle records confirmed his figures.

I would like to also point out—and we will leave our study here with you—that my chief staff member, our staff attorney in this preparation, this booklet, later became the Federal Insurance Administrator, Gloria Jimenez. Gloria Jimenez was recommended by me to the President. She was my chief lawyer at the time and I recommended her to the President, and she served approximately 4 years as Federal Insurance Administrator.

Remember, there is no statistic that shows that a safe-driving young person has any wrecks. Our law established driving record as an objective standard, so that no safe driver, young or old, male or female, would be penalized or surcharged.

The rates of safe drivers were reduced by our law. Since the primary purpose of insurance is to share risk across all population groups, it is unfair for insurance companies to place undue financial burdens on any one group for characteristics over which they have no control.

In North Carolina, we decided that all drivers had control over their driving record, but no control over their sex. Our law established driving records as an objective standard, so that no safe driver, young or old, male or female, would be penalized or surcharged.

We are striving to make free enterprise work for everyone in North Carolina.

The CHAIRMAN. Mr. Ingram, how many other States prohibit the sale of insurance on sex-based tables?

Mr. INGRAM. Senator, I think there are approximately three other States, and I think there are approximately three other States that have a reinsurance facility such as North Carolina.

The CHAIRMAN. Let me ask you some very specific questions, because there is nothing better than a pilot project and indeed, in this area North Carolina is a pilot project.

One of the arguments raised is that if we eliminate sex-based tables there will be a problem of availability of insurance because of the elimination, that the insurance companies will cease writing if they cannot write on a sex-based basis, they will quit writing certain people. What has been your experience?

Mr. INGRAM. First, Senator, the companies still come to North Carolina to be licensed to write automobile insurance, and we have far more companies writing in North Carolina now than when I first took office or when our law was passed. And because of our reinsurance facility—and you appear to guarantee availability on page 5 of this bill—we have no availability problem in the insurance required by law for automobile purposes in North Carolina.

The CHAIRMAN. As far as you know, is the rate of uninsured in North Carolina significantly different than that in other States?

Mr. INGRAM. We are very low in North Carolina, very low. For instance, let me say to you one State out in the West has about 3 million uninsured motorists, and therefore the uninsured motorist coverage—

The CHAIRMAN. There could only be one State in the West that could have that many uninsured.

Mr. INGRAM. That is correct. They have their uninsured motorist coverage for some companies that are costing as much as our basic limits coverage costs in North Carolina, which is around \$90. And our uninsured motorist coverage in North Carolina is only \$3.

The CHAIRMAN. Is that all?

Mr. INGRAM. Yes.

The CHAIRMAN. How do your rates generally compare with—I would like to say all other States of the United States, but with surrounding States, if you do not have nationwide statistics?

Mr. INGRAM. The companies, when we have rate hearings, always claim in the newspapers that we have the lowest rates in the Nation.

The CHAIRMAN. Are you in charge as insurance commissioner of setting the premiums so the companies can make an adequate profit? Is that part of your responsibility?

Mr. INGRAM. To some extent. Our law was changed in 1977 restricting the authority of the insurance commissioner, and so the rates are promulgated by a rate bureau, which I have advocated should be abolished because it is a price-setting mechanism. It is a monopolistic organization and I have advocated abolishing this rate bureau.

The CHAIRMAN. Who makes up the rate bureaus?

Mr. INGRAM. The casualty insurance companies.

The CHAIRMAN. And they are established by State authority? This bureau is established by State authority?

Mr. INGRAM. Yes; that is correct. It is legal price fixing, the same as you have with McCarran-Ferguson, which permits legal price fixing in insurance rates.

The CHAIRMAN. Not unlike, then, the rate bureaus for trucking, which we have been trying to get rid of for a number of years, where they establish a certain rate for all truckers and the very good ones can make a very handsome profit on it and the very bad ones can make some profit on it.

Mr. INGRAM. Very similar, very similar.

The CHAIRMAN. Now that this has been in place for almost 6 years, do you get many complaints from your indigenous insurance companies about the fact that they cannot write on a sex-based classification?

Mr. INGRAM. No. As a matter of fact, one company that was in on another matter where we helped them save some money on their income taxes said they fully support the law now, although they still continue to try to oppose this law throughout America. But this one casualty company president told me—and I am sure he would not want to be identified, Mr. Chairman—he told me that he felt that the law was working well.

The CHAIRMAN. It has been my experience frequently with either the McCarran-Ferguson Act or a variety of other things that we will have industries come here and testify that what the Congress wants to do is a State matter, and then go to the States and attempt to stop whatever we wanted to achieve here at the State level also.

So the fact that their testimony in the States might be no different than here does not surprise me. On occasion—the auto insurance industry has not done this yet, but I have seen some businesses come here and say, what you want to achieve is a good thing, but should be done at the State level, but still oppose it at the State level, which puts them in a bit of a logical bind in terms of their argument.

Mr. INGRAM. Yes.

The CHAIRMAN. You obviously know this business and this industry very well. Let me put you on the other side, as if you were an advocate for the insurance companies. What are the best arguments you could make against the experience you had in North Carolina, if you were going to the legislature saying, this hasn't worked very well, let us undo it?

Mr. INGRAM. Well, of course, the argument that they made to our general assembly at the time was that it was not actuarially sound, and most of the actuaries belong to the insurance industry. In other words, they have something like 600 casualty actuaries, where there are probably less than two dozen that work in the area for the consumer.

And so at the time this argument was raised in our general assembly, fortunately we were able to get the testimony of Dr. Stern and Robert Hunter, who at that time was with the Federal Insurance Administration. We were able to get the testimony of these two casualty actuaries in order to show that it was actuarially sound.

It is a shifting from the people who are really not causing the problems to the people who really cause the problems. As Mr. Hunter said, 90 percent or so cause no problems.

The CHAIRMAN. In terms of life insurance, Dr. Brilmayer's very simple chart proves a clear conclusion. If you took nothing, no other factor than men and women, indeed women live longer. If you took no other factor, not how long they drive, how old they are, or anything else, I suppose you could make all kinds of conclusions based upon just that classification.

The argument is, are there better methods of classification? I think clearly in North Carolina you have proven you have any number of better methods of classification than just men or women to reach a fair conclusion, frankly, I would say a fair conclusion for the entire population, because for those whose rates went up because they are accident prone that is fair and their rates ought to go up.

Mr. INGRAM. That is correct.

The CHAIRMAN. I have no other questions. Thank you very much for coming up this morning. It was very, very interesting testimony.

Mr. INGRAM. Thank you, Senator Packwood.

The CHAIRMAN. Next, let us move on to a panel of: Tom O'Day, the assistant vice president for the Alliance of American Insurers; T. Lawrence Jones, president of the American Insurance Association; and Lou Wilson, the president of Oregon Automobile Insurance Co.

Let me welcome two old friends to this group. Tom O'Day and I were close friends in Oregon years ago before he chose to move East and undertake the job he has finally arrived in. And Lou Wilson and I go back at least 25 years. He has been a longstanding supporter and friend.

I am delighted to have you both here. Tom, why don't you go first?

STATEMENT OF THOMAS A. O'DAY, ASSISTANT VICE PRESIDENT, ALLIANCE OF AMERICAN INSURERS, ACCOMPANIED BY MAVIS WALTERS, SENIOR VICE PRESIDENT, INSURANCE SERVICES OFFICE

Mr. O'DAY. Before I get started, Senator, there is one other member of the panel with us, Ms. Walters, the senior vice president of the Insurance Services Office. She is here in a technical ca-

capacity supporting the trade associations. At the last hearing you had a question about the Insurance Services Office, who they were. I think she will provide, particularly in the questions and answers, some valuable input for the committee.

The CHAIRMAN. Thank you.

Mr. O'DAY. Thank you, Mr. Chairman.

The Alliance is a national trade association of more than 160 companies which write automobile and other property and casualty insurance in every State of the Union and the District of Columbia.

We are limiting our testimony today to the effect which S. 372 would have on property and casualty insurers and their policyholders. The other potential disastrous effects of this proposal have been and will be addressed by others from the rest of the insurance industry, the business world in general, and the Government sectors.

We are here today to testify in strong opposition to S. 372. our statement is self-explanatory. We appreciate it will be made a part of the full record. In these few minutes, we would like to take the opportunity to briefly mention its thrust, that is our statement, and then to discuss the very real problems which will adversely affect the automobile insurance companies and will benefit neither consumer, insurance companies, nor regulatory offices.

Our statement addresses only the issue of gender, since State laws already prohibit discrimination in the sale of insurance based upon race, color, or national origin. The gender of a person does, however, enter into the price of automobile insurance. As a group, young female drivers generate smaller frequencies and smaller severity accidents, thus entitling them to lower automobile insurance costs.

Our statement explains the rationale behind the automobile insurance classification, a method that we think avoids unfair discrimination. It also provides ample data substantiating the continued use of the gender class in automobile insurance.

It then identifies what we think is the real issue behind this bill or these bills: major conflicts between what would otherwise be socially desirable public policy, that is the use of gender to avoid unfair discrimination, what we think we are doing now, the elimination of the gender factor in economic life, which is certainly a part of this bill, the continued role of States in insurance regulation.

Mr. Chairman, our companies believe the resolution of these conflicting policies should be resolved, if they are resolved at all, by State legislatures, not Congress, since the responsibility for regulating the business of insurance has been given to the States. Other members of this panel will address the economics of eliminating the use of gender.

It has been said that S. 372 does not impinge upon the traditional role of States in the regulation of insurance since it does not establish a Federal bureaucracy directed to enforce the mandate it imposes upon both the States and the insurance business. In fact, the legislation drops what we think is a major regulatory headache on the States and then walks away, leaving to them the problem and lets them cope with it as best they can.

The problems come from two sources: First, we think there is bound to be an outcry from the affected policyholders who express

outrage upon learning of the substantial rate increases which their automobile insurance companies will need to comply with the law. You know as well as I do that this public outcry will be directed at automobile insurers and there will be demands for greater legislative and regulatory controls over the companies.

After all, the insurance business is a highly competitive business. It is not at all like a public utility. In this case, literally hundreds of companies compete with each other. It is elementary that each company will seek out as its customers those easily identifiable individuals whose premiums will be excessive to cover their anticipated losses.

On the other hand, as far as individuals whose premiums are perceived by the companies to be inadequate, they will not find a ready market for their insurance and they will end up in whatever is the residual market mechanism. In practice, we would anticipate that in those States where insurance regulators must approve rates before they are put in effect by companies there will be strong pressure by those affected policyholders whose premiums are being substantially increased to disallow the new rates.

As insurance regulators succumb to these pressures, inadequate rates will result and further market dislocation will be created.

Mr. Chairman, our companies are deeply concerned about the seriousness of the basic public issues which are raised by this bill. As we have noted many times, all statistics, both insurance and noninsurance, show that young women have a significantly better driving and accident record than young males at every level of miles driven.

S. 372 is what we described in our statement as social engineering which ignores economic realities, and as such should be rejected or at least seriously changed to minimize, if not eliminate, its very adverse effects upon consumers, insurance companies, and the Nation as a whole.

Thank you.

[The statement follows:]

STATEMENT OF THOMAS A. O'DAY, ASSISTANT VICE PRESIDENT, ALLIANCE OF AMERICAN INSURERS

I am Tom O'Day, Assistant Vice President of the Alliance of American Insurers, a major national trade association of 163 companies who write automobile and other property and casualty insurance in every state of the union and the District of Columbia.

We very much appreciate the opportunity to present our views in opposition to S. 372, the "Fair Insurance Practices Act."

Mr. Chairman, most of our testimony today will address the issue of "sex discrimination." State laws combined with state insurance codes prohibit discrimination in the sale or pricing of insurance on the basis of color, religion, or national origin. Besides being illegal, such discrimination is abhorred by chief executive officers of Alliance member companies.

Were it not for the inclusion of "sex discrimination," S. 372 would address no practices whatsoever which are a day-to-day part of the insurance business. The color, religion or national origin of a prospective policyholder does not enter in any way into a company's underwriting judgment or pricing system.

As we pointed out in testimony before this Committee last year, gender does affect cost if the insured person is an automobile insurance policyholder, single and generally under 25 years of age. Everything else being equal, being a female makes that person a better risk, which our companies have historically believed entitled such person to lower insurance rates.

COMMENTS ON SENATE COMMERCE COMMITTEE REPORT ON LAST YEAR'S BILL

We would like first to set last year's record straight. The Senate Report (No. 97-671) released last December by this Committee to accompany S. 2204, the "Fair Insurance Practices Act" of the 97th Congress, contains numerous inaccurate assertions about trade insurance company practices.

Several of the major insurance industry trade associations have put together an extensive comment paper on this Report. The industry lists, and factually rebuts, some 40 assertions made in the Committee's Report. Although many of them are related to life/health insurance, several are concerned with automobile/property/casualty insurance, those lines of business underwritten by our companies. We have extracted those and have included them as Appendix C.¹

Although these comments relate to last year's bill and Report, they are pertinent to consideration of any similar bill such as S. 372.

We would like to call special attention to one of the Report's most inaccurate assertions. The Report states that studies submitted by the Alliance and other sources of data prove that females have more accidents than males on "a mileage adjusted basis."

This is just not true! All statistics—both insurance and non-insurance—show that young women have a better driving/accident record than young males at every level of miles driven (see Appendix C, pages 5-7).

CLASSIFICATION—THE BASIS FOR PRICING INSURANCE

Each year, insurance companies put a price tag on literally millions of risk exposures. In order to minimize subjective judgment, classification systems have been developed whereby individuals sharing relatively similar risk exposures are grouped together for pricing purposes. The way a policyholder is classified has a direct bearing on the price he or she must pay for insurance.

The concept of using classification as a way of pricing a product or service, or grouping certain individuals for targeted treatment is not restricted to insurance. Classifications are used to help determine the price of just about everything we buy, from steaks to airline seats. The cost of mailing a letter, getting a bank loan, or paying one's social security taxes all depend on the way we are classified.

In fact, classifying certain individuals for targeted legislation is not an uncommon practice. Last year, for instance, the House and Senate, as part of the Surface Transportation Act of 1982 (Title II, Sec. 109) urged the states to bar the sale of alcoholic beverages to persons under age 21. They very same arguments which have been advanced against the classification concept in insurance are today being advanced to state legislators who are considering raising the drinking age to 21 by those who feel "discriminated" against.

Despite almost universal acceptance of the concept, however, the classification of insurance risks has been a most controversial subject. It is controversial because it seems to involve conflicts in social values.

Until fairly recently, attacks on the insurance classification system have been generated by those who believe that they are paying too much for insurance. It is only of recent date that those who have been paying less than average, have sought to have their classification status altered. In regard to property and casualty insurance, the effect of S. 372 would be an increase in the cost of insurance for those who are preceived to be discriminated against.

Consumers generally believe, however, that charging policyholders premiums based on objective evaluation of risk exposure is sound policy. This was recently corroborated in a public opinion survey performed by the All-Industry Research Advisory Council (AIRAC).²

There are, of course, a great many characteristics which insurers could use for classification purposes. Insurance pricing, however, is based on the law of large numbers. For practical reasons, companies must limit the criteria used for classification purposes to those which can be readily identified, those that are most objective in nature and those that are likely to have the greatest effect on risk exposure. For purposes of auto insurance, age and gender of the driver, make and model of the auto, where the car is generally garaged, and the use of the automobile, have been identified as both the most important criteria and the most objective around which the classification system has been structured.

¹ The appendices referred to in this statement have been retained in the committee files.

² AIRAC was formed by the property-casualty insurance industry to provide the public and the industry with timely, reliable research information relevant to public policy issues affecting risk and insurance.

Insurance is a risk spreading mechanism through which those who seek to protect themselves against similar type losses pool small sums of money (premiums). If any one class of policyholder does not pay a fair share of anticipated losses, all other policyholders must increase their payments so as to insure adequate resources to pay all losses.

Artificial manipulation of the classification systems leads directly to the subsidization of one class by another. As policymakers attempt to force insurance companies to stop using valid classification criteria in their rating plans, they are basically legislating against the use of empirical knowledge. They are forcing insurance companies to charge policyholders inappropriate prices.

Such "social engineering" simply does not work. It interferes with the environment in which insurance is sold. After all, insurance is a highly competitive business. It is not like a public utility where one company has control over all of its kind of business in a given area. When you have that kind of non-competitive situation, you can have one group subsidizing others with few problems.

The utility situation is very unlike that of insurance. Literally hundreds of insurance companies compete with each other in every area of the country. It is elementary that each company will seek out as customers those easily identifiable individuals whose premiums will be excessive to cover anticipated losses. As for those individuals whose premiums are perceived by the companies to be inadequate, they will not find a ready market for their insurance needs and they will end up in a residual market mechanism.

In practice, we would anticipate that in those states where insurance regulators must approve rates before they are put in effect by the companies, there will be strong pressures by those affected policyholders whose premiums are being substantially increased to disallow the new rates. As insurance regulators succumb to these pressures, inadequate rates will result and further market dislocation will be created.

Yet, if the rates are allowed to raise as they should—as a result of gender elimination—look for a number of women to drop their insurance and go uninsured. This is the pattern which is usually followed in any jurisdiction where, for one reason or another, sudden quantum jumps in auto insurance premiums have been authorized—even in compulsory auto insurance states.

Thus, we believe, that this "social engineering" is likely to set in motion forces that cannot produce a stable market until stringent additional government controls have been imposed on the marketing, underwriting, classification and rating functions of the industry.

INSURANCE CLASSIFICATION BASED ON GENDER IS VALID AND EQUITABLE

Mr. Chairman, the statement we submitted on July 15, 1983, provides extensive data supporting the use of gender as an automobile classification.³

In summary, insurance industry data show very clearly that the number of claims per 100 insured cars is considerably higher for single male drivers under age 21 than single female drivers under age 21. Further, the average loss per claim also shows significant differences between gender, the cost being considerably less for females than males. Finally, the average loss per insured car confirms the fact that losses generated by single male drivers under 25 are considerably in excess of those losses generated by single female drivers.

Likewise, non-insurance industry data confirm the insurance loss experience with respect to gender classification. Note, for instance the California Department of Insurance 1979 study of driving performance (see page 8 Appendix A). Motor vehicle statistics for New York State in 1978 showed that young male drivers had twice as many reported accidents as young females. An update (1981) of that study shows a slight drop in the frequency of accidents for both male and female but confirms the male-female ratio. (See page 6 Appendix A).

Our 1982 presentation to this Subcommittee made reference to data published by Accident Facts, a publication of the National Safety Council, which indicated a substantially higher accident frequency for male drivers than for female drivers. In fact, over the 17 year period, 1965 to 1981, the fatal accident rate for male drivers was on the average 2.3 times the fatal accident rate for females. (See page 10 Appendix A).

Not only are younger males involved in more accidents, they are the subject of many more driving violations than their female counterparts. This is confirmed by

³ Copy of the relevant sections of this testimony is attached. (See Appendix A). Note that the statistics have been updated wherever more recent data is available.

studies done by the States of Michigan and California. For example, in Michigan, the speeding conviction rate per 100 drivers, in 1978 was 6.4 for males compared to 2.3 for females. Such differences persists when the data is adjusted for miles driven. (See page 8 Appendix A).

So much for frequency of accident. The other major criteria used for automobile insurance classification purposes is accident severity. Severity is the average loss cost resulting from each claim. Here again, all information shows beyond a doubt that losses arising out of accidents involving young males are considerably higher than those involving females.

Finally, it bears noting that there are important differences in the driving pattern between males and females. Men generally tend to obtain drivers licenses at earlier ages; they drive more miles per year; they do considerably more nighttime driving; they do most of the weekend driving and they are more likely to be impaired by alcohol while driving.

Accident Facts notes that these characteristics are generally associated with higher accident involvement and severity.

Mr. Chairman, we have devoted considerable attention to the propriety of the existing gender classification from an actuarial-economic standpoint since many who support S. 372 allege that gender has little or no impact on driving performance.

For instance, in the September 1982 report issued by the New Jersey Commission on Sex Discrimination in the Statutes, it is alleged that "mileage alone is able to explain more of the variation in accident data than is sex." We wholeheartedly disagree with that observation. As we explained earlier, this is just not true. Young females have a better driving/accident record than young males at every level of miles driven (see Appendix C, pages 5-7).

We would, however, point to a very accurate and revealing statement found on page 2 of the Commission's report.

The report starts out with an excellent description of the evolution of automobile insurance classifications and their purpose. We agree with the comment that "the classification plans' ultimate goal is to avoid cross subsidies between groups and to assure that each group of insureds pays its 'fair share.'"

The report also provides an accurate description of the historical changes that have been made in the classification system, pointing out that the gender class was introduced "in the early 50's" by the direct writers who "targeted specific segments of the market." Then, comes this statement:

By using sex and other democratic variables, in addition to the few driving record and usage classifications already in existence, the direct writers were able to secure a foothold in the marketplace by their ability to offer lower premiums to selected groups of drivers. (Emphasis added.)

What this says, in fact, is that direct writers identified gender as a class which would generate fewer losses per insured automobiles. Thus, they could safely offer a lower premium to this group without impairing their solvency.

In other words, the report issued by the New Jersey Commission on Sex Discrimination in the Statutes, correctly points out that, in a competitive and economic environment, establishing gender class made good sense. In fact, the Commission's report goes on to state that in order to remain competitive other insurers had to follow the lead set by direct writers. It seems that unless such a class made sense economically, it would have been discarded once the expected lower losses generated by the class were not realized.

THE REAL ISSUES POSED BY S. 372

Mr. Chairman, we believe that any objective analysis of the automobile insurance classification system supports the propriety of the gender class. We do not believe that this is the issue before your committee. Those who are attacking the validity of the class do so as a subterfuge. The real issue rests in the resolution of major conflicts between three highly desirable social policies. They are:

The use of gender as a proper automobile insurance classification in order to avoid unfair discrimination among policyholders.

The elimination of the gender factor in our economic life.

The continued role of states in insurance regulation.

Mr. Chairman, the Alliance believes that although property and casualty insurers have a vital interest in the resolution of the conflict between these highly desirable social objectives, the public policy must be established at the legislative level. However, for reasons set below, we feel just as strongly that the policy should be established by each individual state and not at the federal level.

In an earlier part of our statement, we referred to the market dislocations which occur when individuals are misclassified for automobile insurance purposes. The immediate impact of the elimination of gender in auto classes will be a substantial increase in automobile insurance costs for younger women accompanied by a moderate decrease in premiums for younger males. Younger women's automobile insurance premiums will increase on the average 25 to 30 percent or more from present rates. As a class they will be paying automobile insurance companies approximately \$700 million more per year.

Although this group of policyholders will become a highly attractive target for insurers—since their automobile insurance premiums will be excessive for the expected losses which they will be generating—one should anticipate that upon receipt of automobile insurance renewal policies they will be astounded at the considerable increased cost. We must anticipate that such consternation will be translated into action programs aimed at both state legislators and regulators, since consumers are well aware that matters relating to the pricing and regulation of insurance are controlled by the states.

Just as important will be the actions taken by state insurance regulators to insure proper rates and market stability. It is a fact of life that any major interference with the market economy leads to dislocation of the market. The traditional response to this has been additional regulation which in turn has forced additional dislocation. This never ending game ends up forcing more and more policyholders into residual or assigned risk markets mechanisms where they end up paying more for their insurance.⁴

CONCLUSION

Mr. Chairman, we believe this Committee has done well to generate debate on this issue. For good reasons, however, we hope that resolution of the debate will be left to the states.

It makes enormous sense that those who will be paying more for their auto insurance cost should be given a direct voice as to whether they favor higher auto insurance premium in return for the further elimination of gender from our economic life.

We believe that debating the conflicting public policy issues described above before the state legislatures rather than Congress will provide a better forum. Those who will be directly affected in the pocketbook are more likely to make their views and values known in state capitals than before Congress. Also the local media will be more likely to cover the debates, thus providing the opportunity for legislators to hear from a wider segment of the public.

If gender as a class is to be abolished in automobile insurance practices, should it not be done by those who have general responsibility for insurance regulation so as to insure stable market conditions? S. 372 dismembers the responsibility for insurance regulation between the states and the federal government. Such splintering is bound to lead to serious conflicts between government entities, leaving both policyholders and insurers uncertain as to their rights and obligations. This must be avoided and would be avoided by letting the individual states decide the issue.

We recognize, Mr. Chairman, that if the debate is to be resolved at the local level, there may not be, at least for the time being, uniformity in treatment of the issue. Is this bad in itself? If some affected policyholders in one state elect to maintain cost base pricing while, in another state, they select as their objectives the elimination of another gender based characteristic from economic life, no national dislocation will result. We believe that this issue is one which typically exemplifies the desirability of our federal system and the opportunity of local self determination. Therefore, we urge you to reject S. 372.

The CHAIRMAN. Thank you, Tom
Mr. Jones.

⁴ The three states which have witnessed the greatest interference with market economy by legislators or regulators are New Jersey, Massachusetts and North Carolina. Combined, they account for 53.3 percent of the country's entire residual market population. See Appendix B.

STATEMENT OF T. LAWRENCE JONES, PRESIDENT, AMERICAN INSURANCE ASSOCIATION, ACCOMPANIED BY PENELOPE S. FARTHING, SENIOR COUNSEL

Mr. JONES. Yes. My name is T. Lawrence Jones. I am pleased to be before the committee today representing the American Insurance Association, of which I am the president. With me is Penelope S. Farthing, senior counsel for the association.

Senator, the first point we would like to make to you is, our companies do not believe that we discriminate when we use sex in our classifications and groupings.

Second, we want you to know——

The CHAIRMAN. You do not wrongly discriminate? You can have discriminating tastes and discriminating habits. There is a clear distinction between men and women.

Mr. JONES. But that is not the current definition of "discrimination." That is an old one, not in current use.

We do make distinctions, but when we find that distinction material we think we should recognize it in our classifications. It is true, we do group for purposes of insurance, but only where that is significant. And I want to say that our companies want to deal with everyone fairly and equally, and we think that we do.

Our business is based upon probability analysis, probability analysis of natural events. It is the first application of science to business. We are being asked by this bill to ignore that when there is a significant difference between sexes, between gender, as to the probability of losses or probability of having the benefits of the policy utilized.

You have shown interest in individual analysis and some of the witnesses have made the plea to you that they be treated as individuals. Let me say that, first, they are treated as individuals in the underwriting process. There, the company designs their product for a certain market and they look at them as individuals to see if they fit in the universe which they plan to market.

We have complaints about that. They are not particularly pleased to be looked at as individuals. Also, it is very expensive to begin an analysis of people as individuals for risk in insurance. Some have tried that or experimented with that and find that there are many factors they want to use.

One of your witnesses said smoking was a factor, but that is not the only factor that one would want to ask. We have to go into habits and individual characteristics. We can assure you that the civil rights groups would be much more concerned about our inquiries into individual habits, their drinking habits, their driving habits, when they go out, what are their general practices.

Furthermore, we would end up with a situation where two young men or two young women similarly situated, living in the same neighborhood, driving the same kind of car, would end up with different rates. If you think we have trouble explaining rates now, we would really have it then, because it would be based upon personal habits, and they would not want that to be a subject for inquiry.

The CHAIRMAN. But you have that situation now, do you not? If you have a 20-year-old boy and a 20-year-old girl living in the same neighborhood, driving the same cars, they pay different rates.

Mr. JONES. Yes. That would be on sex, because we find that the young woman has far fewer accidents, and less expensive losses when they do occur. The young man has more frequent accidents.

I was talking about the same sex; if we had two young women living in the same neighborhood, driving the same type car, ending up with very different rates because of their personal habits, the time of day they drive, whether they smoke, what their drinking habits are. You would find real complaints arising from that.

In closing, let me say that we do have a very elaborate system of State regulation of classifications, and we would urge the Congress to leave it with the States. The McCarran-Ferguson Act basically said, if there is a system of State legislation that regulation will govern and Federal regulation will not be imposed upon it, and we would urge you to maintain that policy.

[The statement follows:]

STATEMENT OF T. LAWRENCE JONES, PRESIDENT, AMERICAN INSURANCE ASSOCIATION

My name is T. Lawrence Jones and I am pleased to be before your Committee today, representing the American Insurance Association of which I am President. Our association is composed of 169 property and casualty insurance companies—both stock and mutual—doing business in all 50 states. With me is Penelope S. Farthing, Senior Counsel of the Association.

Our member companies do not believe that they discriminate in insurance on the basis of sex and gender. They clearly do not have any intent to do so. They do not believe that they are discriminating when they recognize significant differences in risk exposure characteristics of women and men.

Our member companies want to serve all freely and fairly regardless of gender. They believe that equal application of the basic principles of our industry is not discrimination but the essence of fairness and equality.

In those cases where risk exposure of women is significantly less than that of men, women should have lower rates reflecting the lesser risk. Where the risk exposure of men is significantly less than that of women, men should have lower rates reflecting the lesser risk. Not to recognize these differences would be unfair.

Our industry cannot view S. 372 as civil rights legislation. It has too much economic impact and dislocation to be viewed simply as civil rights legislation. We believe the Congress has the obligation to study carefully the economic impact of the bill—certainly to a greater extent than it has.

Probability mathematics and its application to natural events is the very foundation of our industry. S. 372 directs us to ignore the fundamentals of our industry. For that reason we oppose its enactment.

Most of our companies—in addition to writing casualty insurance—write life and health insurance and offer annuities and insured pension plans. But our Association's responsibility is to speak for our member companies on property-casualty insurance matters. That will be the direction of our testimony. Nevertheless, the principles of probability mathematics are applicable to all those areas of insurance.

In the area of property-casualty coverages, the greatest impact and dislocation is in auto insurance coverage of young women and young men. Probability mathematics clearly establishes that young women will have fewer auto accidents and less severe ones in a given time period than young men. Thus, we charge young men more for their insurance coverages than we charge young women.

If S. 372 were enacted and we had to charge young men and young women in the same age category in a given place the same rate, the young women would be substantially overcharged and the young men undercharged. What would result? First, it would be an unfair burden on young women, who, as the Labor Department reports annually, earn less than men across the board. What is fair about asking young women to subsidize the insurance premiums of young men at a period in their lives when their earnings are likely to be at their lowest point? Second, the young women with their excessive premiums, would become highly desirable risks for an insurance company, while the young men, with insufficient premiums, would become very undesirable risks. Certainly a free market would respond to such a basically unfair situation. We would be very surprised if these are the results that this Committee wants to achieve.

These overcharges of young women for auto insurance and dislocation of auto insurance markets for young men would result from telling the insurance industry to ignore probability mathematics when applied to the exposure of young men and young women to the risk of auto accidents. This legislation is saying to ignore the fundamentals of our industry.

It is not a small matter. Peter F. Drucker, the distinguished business philosopher, when addressing our association, said:

"Insurance, as we know it today . . . was the first and one of the fairest results of . . . 'Scientific Revolution.' We today take probability thinking for granted. It is easy to forget that probability mathematics are fairly recent—not yet 300 years old—and were radically new mathematics both in their scientific and in their philosophical foundations. 'Indeed, it is insurance which was the first 'modern industry,' the first one that applied new knowledge to doing something radically new, something that had never been done before. Out of it grew an industry that is central to all economic activity and indeed central to man and his life.'"

Yet S. 372 would seem to say to desert—or distort—that great tradition that is the very foundation of the insurance industry—the application of probability analysis to natural events.

Some proponents of this legislation make a plea to be treated as individuals rather than as a member of a group such as male or female. They are treated as an individual in the underwriting process. When the underwriter—that is, the decision maker—finds a characteristic that makes the individual significantly different than the universe that has been priced or rated, then the underwriter can reject the application or put the individual in a specially rated classification.

I must say to you that many of those individuals that have been treated individually have objected strenuously.

To rate or price as individuals would involve considering personal habits and characteristics and would require delving into personal activities. It would be costly, but even more importantly, it would be even more objectionable to those that do not like the present classification system. Gender is an objective fact. Individual probability analysis is very subjective by nature. Some would say it would be too great "an invasion of privacy."

Further, individual analysis will lead to circumstances where two individuals of the same sex and age, living in the same neighborhood and driving the same type and age automobile are being charged different rates for their auto insurance because of an individual characteristic or habit. Let me assure you that one or both of those individuals will individually object.

I feel very comfortable in assuring the Committee that those individuals asking to be treated individually with regard to auto insurance rates would not like it if they were. I am confident that they would object loudly and vigorously.

It has been pointed out in articles and testimony that ignoring probability analysis as it applies to men and women in other lines of insurance may result in the women being undercharged for coverage rather than overcharged as in the case of young women purchasing auto insurance. Nevertheless, the legislation is asking for the same inequality and unfairness resulting for ignoring the fundamental principles of the insurance industry. Overcharges and undercharges and dislocations would be the result. We urge the Congress not to pursue that course.

There is another important aspect of the legislation that must be addressed. As the Committee knows, the insurance industry is basically state regulated. There is an extensive body of regulation at the state level including regulation of rates. S. 372 would superimpose a federal law over this system of state regulation.

We are not suggesting that the Congress does not have the authority to do that. We are urging that the Congress have the wisdom not to do it. It is far better to leave the state system to the states and their policymakers.

The Insurance Services Office, an industry statistical and service organization, prepared a schedule showing the application of S. 372 to the auto insurance rates for two risk categories of young women in a number of states and cities. That schedule is attached and made available to the Committee for their study and consideration.¹ An explanation of the categories and coverages is a part of the attachment. The explanation also illustrates its application in several cities.

We appreciate this opportunity to appear before you with other representatives of our industry—"the first modern industry."

The CHAIRMAN. Thank you.
Lou.

¹ The attachment has been retained in the committee files.

STATEMENT OF LOUIS V. WILSON, PRESIDENT, OREGON AUTOMOBILE INSURANCE CO., ON BEHALF OF NATIONAL ASSOCIATION OF INDEPENDENT INSURERS

Mr. WILSON. Thank you. Senator Packwood, other honorable members of the committee and staff, I am Lou Wilson, here representing not only the National Association of Independent Insurers, but also my own policyholders. The NAI is a trade association of over 500 companies that insure 40 percent of the auto insurance market, and we oppose S. 372, which would possibly preempt State regulation of insurance, destroy cost-base pricing, and would definitely unfairly penalize women drivers.

I mean to say that my company has been honored by being selected the most consumer oriented company in the United States. So I express that to show you that we do care for our policyholders and the general insurance-buying public, and I fight for what is fair, honorable and right for my policyholders.

I am therefore vehemently against this bill and what it will do to my company's women policyholders. I have 49,000 of them and that is just in my company, let alone what the NAI represents.

I tell you that if this bill passes they and millions of other women drivers and policyholders will be screaming, hopping mad. I have done a personal survey just to check and see what people think, almost to the point where they think I am some kind of a nut accosting them. And with all due respect, I think that possibly your staff is out of touch with Ms. America out there in the streets.

I wish, instead of listening to people like me and women's organizations, you could go out into the streets and stores and villages and talk to these people. You would get a heck of a lot different answer.

Now, I would like to show that the industry does respond to concerns. Back in the sixties we had kind of the same thing we are seeing now, a great deal of dissatisfaction with the industry's rating methods for auto insurance. The opponents complained the six or seven classifications we used were not broad enough to cover the spectrum of various individuals.

In fact, the chief complaint was that people were too lumped together, that people were put into classes too broad to reflect their individuality, and the good drivers subsidized the bad drivers. So a national rating organization, which is now the insurance services office that she represents, they developed a then-revolutionary rating plan, and generically it is now called the 360 class plan. It has changed back to 260 and I think maybe it is 160 classes now.

These are many different categories which in essence individualize people as much as possible, while still maintaining statistical credibility, which is necessary in all individual underwriting criteria that can be and is applied to various individuals. Under that first plan we can have five million classifications. There were maybe 30,002 that were useable.

But in my humble opinion, this is a superb system for avoiding the stereotyping of the individual, for avoiding the lumping of individuals, for providing excellent statistical information for us, and in order to be competitive and yet fair to the public. It also allows

us to maintain profitability and, very importantly, solvency for the protection of our policyholders.

Now, the few women who object to the use of sex as a criteria used in ratemaking—this comes back to the two things you talked about this morning, Senator—basically object because they pay a different rate than men, and I think that sets them apart. There is inequality and they are thereby unfairly discriminated against.

This is not true. Permit me to be a little technical for the sake of explanation. Under this plan, each geographical rating territory carries a different rate base for each coverage, and this is terribly important. Each person is charged exactly the same.

Let us use \$51 as a rate. That is the base rate for \$35,000 liability limits in Salem, Oreg. I use it because you are familiar with that. All women pay \$51, as do all men. All young people pay \$51, as do all others. So everyone pays the same.

The proponents of your bill seem not to mind the other facts and then alter these base rates whereby we arrive at a final individual policy premium. They accept differences in miles driven, differences in driving records, and territories and ages, as young people have more losses, and so forth.

So we finally changed those things. For instance, a woman over 30 and single, the only driver in the household, gets a 10 percent discount. If she has a loss, then she still gets a 10 percent discount, but she pays different than the loss-free woman.

So you have really fully equality in the initial base rates that are set for the people, but you also have individuality that takes care of all the other women, or men for that matter. We cannot exclude them.

So Senator Hatfield, when he introduced this bill, spoke of his concern for excess pricing. If you pass this bill, they will have excess pricing and be, I think, adversely affected.

Thank you very much.

[The statement follows:]

STATEMENT OF LOUIS V. WILSON, PRESIDENT, OREGON AUTOMOBILE INSURANCE CO. ON BEHALF OF THE NATIONAL ASSOCIATION OF INDEPENDENT INSURERS

Senator Packwood and other honorable members of this distinguished committee and staff, my name is Lou Wilson, President of Oregon Automobile Insurance Company and North Pacific Insurance Company. My companies are mid-sized and regional operating only in the Northwestern United States. Mid-sized for your edification means that we write \$60 million in premium volume per year.

I am here representing the National Association of Independent Insurers, a trade association of over 500 companies which together insure 40 percent of the auto insurance market. We oppose S. 372 which would possibly preempt state regulation of insurance, destroy cost based pricing, and would definitely unfairly penalize women drivers.

In order to establish some credibility for myself, I wish to mention briefly that I have been President of my companies for almost fourteen years. Under my tutelage, we were awarded a coveted "Most Consumer-Oriented Company" in the entire United States in 1978. This honor was awarded by the National Association of Professional Insurance Agents. In the past few years, we ranked within the top ten companies.

We also, for ten years except one, have been the company out of the top 150 auto insurance carriers in the entire United States to have the lowest lawsuit ratio in the country. This is published by A. M. Best & Co. from real world statistics. It means we pay our claims without making people sue.

My whole reason for recounting these items is to establish our sincere concern and caring for our policyholders and the general insurance buying public. I fight for

what is fair, honorable, and right for them. I, therefore, am vehemently against this bill and what it will do to my companies' women policyholders. We have 49,186 women drivers represented in my companies—let alone what NAIH represents.

I will tell you that if this bill passes applying to auto insurance—they and millions of these women like our policyholders will be screaming, hopping, fighting mad. Oregon alone has just under one million licensed women drivers. Can you imagine the ground swell of opposition that could and will develop?

I would like to show the industry's responsiveness to concern. Back in the early sixties, there was a great deal of dissatisfaction over the industry's rating methods for auto insurance. Opponents claimed that the six or seven classifications we used weren't broad enough to cover the spectrum of various individuals. In fact, the chief complaint was that people were too lumped together—that people were put into classes too broad to reflect their individuality. That good drivers were forced to subsidize poor drivers.

The national rating organization that most companies used developed a then revolutionary rating plan that most companies still use today. It is called the 360 Class Plan and consists of 360 different categories which in essence individualizes people as much as possible while still maintaining statistical credibility.

When all individual underwriting criteria that can be and are applied to various individuals, we can realize as many as 5,040,336 categories. The actual usable number of categories is approximately 30,002. In my humble opinion, this is a superb system for avoiding the stereotyping of the individual, for avoiding the lumping of individuals, for providing excellent statistical information for us in order to be competitive and yet be fair to the public. It also allows us to maintain profitability and solvency for ourselves and the protection of our policyholders.

The few women who object to the use of sex as a criterion used in ratemaking basically object because they think they pay a different rate than men and are thereby unfairly discriminated against. This is not true!

Permit me to be a little technical for the sake of explanation. Under this 360 Class Plan, each geographical rating territory carries a different base rate for each coverage, but (and this is terribly important) each person is charged exactly the same. Let's use \$51 as this is the base rate for \$35,000 Liability Limits in Salem, Oregon.

All women pay the \$51 as do all men; all young people pay \$51 as do all older people; all single people pay \$51 as do all married or all divorced people; all good drivers pay \$51 as do not so good drivers; and let me repeat—all women pay the same \$51 as all men, so—there's complete and absolute equality for women or men in the ratemaking process.

Proponents of your bill seem not to mind the other facts that then alter these base rates of \$51 whereby we arrive at a final individual policy premium. They accept differences in mileage driven, differences in driving records, differences in territories such as urban versus rural, differences in ages as young drivers are more accident prone, differences in the strength or crashworthiness of vehicles, differences in the horsepower of cars such as "muscle cars" versus the family sedan, and finally—the public majority desires and accepts the difference between who causes the most losses versus who causes the least losses. The latter happen to be women who by their better driving habits, less miles driven, or whatever causes these better records, thereby entitle them to continue to enjoy lower insurance costs which they won't get if this bill applies to auto insurance.

For example, a loss-free unmarried woman over 30 with no other drivers in the household gets a 10 percent discount. A factor of .90 is applied to the \$51 so her premium becomes \$45.90 or \$46.00. The same unmarried woman with a chargeable loss requires a factor of 1.40 to be applied to the \$46 so her premium becomes \$64.40 or \$64 rounded. So you see, we have different premiums even between women so they aren't classed all together, and we are fair in our treatment of them or men as well.

If our opponents say, "This is too good to be true!"—Yes, it is good and it is true! Instead of sitting in hearings such as this listening to people like me or representatives of national women's organizations, I wish you could go into your neighborhoods, or stores, and on the street and ask women insurance buyers if they want their rates raised from \$33 to \$384—you would get your answers in no uncertain terms. If you truly represent the will of the people, you would find that the women of this country are not desirous of this change.

Ordinary common sense and my personal inquiries to women over how this bill relates to auto insurance has convinced me that the majority of women in this country are not willing to pay an average 30 percent more for their auto insurance.

Finally, if we listen—and we should—to what the Honorable Senator Hatfield said when he introduced S. 372, and I quote partially from the Senate Congressional Record of February 1, 1983, quote, "In the abstract, continuation of discriminatory policies in insurance in its practical ramifications, is distressing. For in an era in which over 40 percent of the work force is women and some 60 percent of these women work out of economic need—denial of access to insurance at fair rates can have severe economic consequences. 7.7 million single-parent families are headed by women and the family is wholly dependent on females for financial support. Yet the availability and scope of insurance for them are minimized and the rates often maximized because of their sex." Unquote.

He speaks to three valid concerns—one is dire economic consequence, two is unavailability, three is maximum rates. Under our current auto rating systems, we satisfy his concerns because women's rates are lower; they are more desirable risks which takes care of the availability problem, and they receive credits off of the norm for their better performance. His concerns are ours and we satisfy his fears; if this bill passes and is applied to auto insurance, it will do the exact opposite of what he and most women want. After all, an estimated \$700 million premium increase for women as a result of the passage of this bill is the very severe economic consequence of which Senator Hatfield speaks. You bring into reality the very situation he fears if you let S. 372 apply to automobile insurance.

Attached to your copies of my written testimony is the result of a year long study of this very same subject undertaken by Oregon's distinguished Legislative Interim Committee on the Judiciary during Oregon's 61st Legislative Assembly.¹

The Findings of Fact on our subject are summarized in three sentences pages three and four. I quote, "Underwriting and rating practices appear to be statistically accurate in terms of the risks posed by different categories of purchasers. There was no evidence that the criteria used was not based on a reasonable, mathematical analysis of the market. As rating criteria, age, sex, and marital status as used in current practice appear to be reasonably accurate indicators of risk."

Taking this one step farther, the next attack against the industry could be against age discrimination which affects the older driver. They get a 10-15 percent discount now, and I suppose that that will be frowned upon.

Believe me, if a concerted effort is launched to deny them this because we are discriminating against them, the Gray Panthers of this nation will descend upon Washington, D.C. in mass. It's no different than the fair discrimination factor we use now in age, sex, and marital status. The NAII opposes enactment of S. 372 because it will be so unfair to our women policyholders. I thank you for the honor of being allowed to appear before you.

The CHAIRMAN. Thank you very much, Lou.

Senator Gorton, do you have any opening statement?

Senator GORTON. No, thank you, Mr. Chairman.

The CHAIRMAN. Tom, let me address this to you, and if the other two want to answer this, it is fine. When the North Carolina commissioner testified, he stated that no safe driver received a rate increase when they went to sex-neutral tables. Is that an aberration for North Carolina, or would that be expected generally across the country, or what?

Mr. O'DAY. I am not an expert in the North Carolina situation. I notice they have one of the largest residual markets in the Nation. Something happened there after their law was changed that would be the equivalent of the assigned risk plan. He calls it a residual. I believe that is his term for it.

Perhaps Mavis has some comment. She is with the bureau and might have some other insights into that.

Ms. WALTERS. I should correct the record, though. I am not with the North Carolina Auto Rate Office. This is a different bureau from the insurance service offices.

I believe the record would show, Senator, that when the legislation passed in North Carolina the legislation mandated that there

¹ The report referred to has been retained in the committee files.

would be no rate increases for those without accidents, so the pricing mechanism was not permitted to respond to the underlying costs. It was through the legislation which mandated no change.

The CHAIRMAN. Let me ask you. In theory, how does this differ from the issue we faced with credit in the United States, when finally we said you could not discriminate on the basis of sex in credit? It has been about a dozen years ago now. The argument of the financial industry was that as a class women were greater credit risks than men, and that was a fair classification. For divorced women they would almost not give them credit, and if they did, it was at an almost onerous price.

But they were lumping them together as women. How does that differ from the underwriting of insurance?

Ms. WALTERS. Senator, my institutional knowledge does not go back to the time you refer to—fair credit reporting—so I do not know what data were being proffered to support the allegation that women were not creditworthy. I am, however, quite familiar with the statistics and the data underlying the automobile insurance rating system. I am a fellow of the Casualty Actuarial Society and a member of the American Academy of Actuaries.

My entire business career has been devoted to analysis of the numbers and statistics and I am very well aware of the fact that statistically women are lower risk drivers than similarly situated men. That difference is not explainable by the fact that women drive on the average fewer miles than males because when you look at similarly situated men and women—that is, men and women who drive the same number of miles—their accident frequencies are different.

For women and men driving the same number of miles, women have a lower accident frequency than men. I would like to offer for the record, if I might, Senator, an analysis that we at ISO have done of the report that was submitted to you 2 weeks ago by Mr. Hunter alleging that mileage could substitute for gender.

We have studied that and found that his analysis is not valid. We would like to leave that for the record, if we might.

The CHAIRMAN. It will be entered in the record.

[The information follows:]

MILEAGE IS NOT A VALID SUBSTITUTE FOR GENDER IN DETERMINING FAIR INSURANCE RATES

Insurers already recognize that mileage is a useful and valid indicator of exposure to auto accidents. It is, in fact, used by insurers to the extent practical in defining driver classes. Mileage cannot, however, substitute for sex as a rating variable in determining fair insurance prices.

The analysis presented by J. Robert Hunter in support of the elimination of sex as a rating variable, is incomplete and is based on unreasonable and unrealistic assumptions. His report obscures the underlying reality that women have substantially lower auto accident frequencies than men. The approach he has suggested is inequitable and unworkable.

The major flaws with Mr. Hunter's study are:

It assumes that accident rates for youthful drivers vary with mileage the way they do for adult drivers. (The General Accounting Office questioned this assumption.)

It ignores the fact that women have a significantly lower accident frequency than men who drive the same number of miles.

It assumes that drivers in the age 20-24 group have the same driving pattern as drivers of all ages.

It ignores the fact that drivers under age 20, clearly could not be accommodated under the suggested approach.

It makes no provision for determining insurance premiums for more than one driver of an insured car.

It relies on the highly questionable assumption that consumers could and would accurately report the number of miles they will drive in the coming year. GAO also questioned this assumption.

The fundamental weakness of the Hunter analysis is noted in the April 18 letter from the General Accounting Office to Representative James J. Florio, Chairman, Subcommittee on Commerce, Transportation and Tourism. GAO commented that the mileage data used in the calculations are at least ten years old and, more importantly, " * * * accident rates may not vary with mileage for youthful drivers in the same way that they do for adult drivers, as Hunter assumed in his methodology."

In fact, GAO observed that 19 year old drivers (as well as all others up to age 19) who were ignored in Mr. Hunter's analysis, are concentrated in the two lowest mileage categories. For all these youthful operators, it would be very difficult, if not impossible to try to distinguish the high risk from the low risk drivers on the basis of mileage.

The underlying assumption that drivers ages 20-24 have the same driving pattern in terms of annual mileage as drivers of all ages is not reasonable and, in fact, is not correct. It defies common sense to accept as realistic that 1 out of 3 drivers in the age group 20-24 actually drive over 15,000 miles per year. The only data on this point of which we are aware comes from the Nationwide Personal Transportation Survey conducted by the Bureau of the Census for the Federal Highway Administration, 1969-1970. Those data indicate that over 75% of males ages 20-24 drive fewer than 15,000 miles annually. Since females drive fewer miles than males, the total percentage of 20-24 year old operators driving less than 15,000 miles is approximately 85 percent. Consequently, the basic assumption underlying the Hunter analysis is factually incorrect.

The study is also deceptive since it masks the basic fact that women have a consistently lower accident frequency than men who drive the same number of miles. The exhibit presented by Mr. Hunter merges the accident statistics for men and women so that more favorable experience of women is hidden.

Attachment 1 is based upon a U.S. Department of Transportation study and shows the three year accident record for both males and females for various mileage categories. It is clear from this exhibit that females have a lower risk of auto accidents than males. For example, males driving between 2,500 and 5,000 miles annually have a three year accident record of 268. Females driving the same distance have a three year accident record of 0.103 or 60 percent lower than males. This pattern is consistent for every mileage category.

What this could mean in terms of premium dollars, consistent with the proposal made by Mr. Hunter may be determined from Attachment 2 which is based upon the Hunter Exhibit A. Although the rate differentials contained in Exhibit A are invalid and inappropriate, we have expanded Mr. Hunter's analysis to show what it really means for male and female drivers.

If we assume an average unisex premium of \$1,000 for all the drivers covered by the table, then Mr. Hunter's calculation would have all those who drive between 2,500 and 4,999 miles, for example, pay \$579 for insurance. However, the actual differentials indicate that males should pay \$1,063, or 84 percent more, while females should pay only \$409 or 30 percent less. In all instances in every category, females would have to pay more than their experience would indicate and men would pay less. Clearly, the proposal made by Mr. Hunter does not provide an equitable basis for determining insurance premiums.

Mr. Hunter's conclusion that the average young woman's premium would change only marginally if mileage was used as a rating variable is false. His conclusion is based upon an unreasonable assumption regarding the distribution of young drivers into mileage categories. Under his assumption, 5 percent of all youthful drivers drive more than 40,000 miles a year, and another 8 percent drive between 25,000 and 40,000 miles a year. Therefore the higher premiums collected from those high mileage youthful drivers will be used to offset the lower premiums from the lower mileage youthful drivers. For example, Mr. Hunter calculates that for Company A in New York City the 23 year old females driving over 50,000 miles would pay 196 percent more while the 23 year old females driving less than 2,500 miles would pay 46 percent less. However, if all those high mileage youthful drivers don't really exist there is no offset! Both common sense and available data indicate that the assumption is faulty.

All drivers under 20 years of age were ignored in the Hunger analysis and his recommended approach simply does not work for this group of youthful operators. Based on exhibit VI of the NAI testimony used by Mr. Hunter, there is a difference of only 1,900 miles between the average annual miles driven by males and females at ages 16-19. Yet the difference in accident frequency is substantial. According to California driver record data, male drivers under age 20 have an accident frequency 83 percent higher than females of the same age. Their mileage difference is simply too small to explain so dramatic a difference in accident frequency. For a rating system to accommodate for this discrepancy very substantial premium dollar increases would have to be charged for very small mileage differences.

A look at Mr. Hunger's own calculations reveals the shortcomings of his approach. For Company A in New York City, a 23 year old driving 5,000 miles would pay \$1,093 while a 23 year old driving 2,000 miles would pay \$625. A 3,000 mile difference would cost \$468 more in auto insurance premiums or approximately \$15.60 for every 100 miles driven. More than 15 cents per mile! In Trenton, for Company B, a 23 year old driving 12,000 miles would pay \$790; one driving 6,000 miles, \$553, a \$237 difference for 6,000 miles or \$3.95 per 100 miles. For drivers younger than 20 years of age more substantial dollar differences would be required. As GAO noted "it may be difficult to get reliable information from insureds on the mileage they drive once they realize that their insurance premiums depend on what they report."

Mileage is a valid indicator of exposure to auto accidents. To the extent practical it is already used by insurers in defining driver classes. For youthful drivers a distinction is made between principal operators and occasional operators. For adult drivers there are short and long mileage classes and the customary use of the car, whether for commuting long or short distances, for business or just pleasure use are all recognized.

Mileage however, cannot substitute for sex as a rating variable. Among young drivers, the only category where sex distinctions are widely used and where accident frequencies and, therefore, rating differentials between males and females are the greatest, the actual and reported mileage differences would be minimal. Further more as all evidence demonstrates, males and females driving the same number of miles have substantially different accident frequencies.

In summary, Mr. Hunger's analysis is unrealistic, unreasonable and impractical. The economic effect of eliminating sex as a rating variable for auto insurance is clear and unequivocal. Young women will have to pay more for auto insurance because insurers will be prohibited from recognizing their lower accident frequencies compared with young men. Mileage differences between men and women do not explain women's lower accident frequencies; men and women driving the same number of miles have different accident frequencies and women's are consistently lower than men's in every mileage category.

The newly constructed averages in the Hunger proposal distort reality. His conclusions are based upon those distortions and not on the premiums which will actually be paid by young female drivers. The premium comparisons compiled by Insurance Services Office focus on individual women and the price they will have to pay. There is no distortion in these figures.

ACCIDENT RECORDS BY GENDER AND ANNUAL MILEAGE

Annual mileage	Number of males	Male ¹	Number of females	Female ¹	Ratio of male to female accidents
Up to 2,499.....	221	0.163	619	0.079	2.06
2,500 to 4,999.....	370	.268	1,046	.103	2.60
5,000 to 7,499.....	877	.223	1,733	.152	1.47
7,500 to 9,999.....	598	.229	583	.179	1.28
10,000 to 14,999.....	2,713	.271	932	.242	1.12
15,000 to 19,999.....	1,436	.319	241	.249	1.28
20,000 to 24,999.....	1,023	.345	127	.299	1.15
25,000 to 29,999.....	482	.353	45	.277	1.27
30,000 to 39,999.....	618	.350	33	.271	1.29
40,000 to 49,999.....	244	.430	8	.273	1.58
50,000 or more.....	442	.563	13	.318	1.77
Total.....	9,024	.305	5,355	.163	1.87

¹ Average number of accidents (3-year accident record).

Source: U.S. Department of Transportation, Federal Highway Administration (with California Department of Public Works), "The Effects of Exposure to Risk on Driving Record," June 1973.

INDICATED RATE DIFFERENTIALS BASED ON ACCIDENT RECORD

Annual miles driven	Three year accident record differential ¹		
	Males	Females	Combined
Up to 2,499.....	0.647	0.313	0.401
2,500 to 4,999.....	1.063	.409	.579
5,000 to 7,499.....	.885	.603	.698
7,500 to 9,999.....	.909	.710	.813
10,000 to 12,499.....	1.075	.960	1.048
15,000 to 19,999.....	1.266	.988	1.226
20,000 to 24,999.....	1.369	1.187	1.349
25,000 to 29,999.....	1.401	1.099	1.377
30,000 to 39,999.....	1.389	1.075	1.373
40,000 to 49,999.....	1.706	1.083	1.687
50,000 and over.....	2.234	1.262	2.206
Total.....	1.210	.647	1.000

¹ Three year accident record by mileage category and gender divided by total average three year record for both sexes combined.

Source: Exhibit VII, page 1 of statement of National Association of Independent Insurers, presented by Galen R. Barnes on February 22, 1983 before the U.S. House Subcommittee on Commerce, Transportation and Tourism.

The CHAIRMAN. Let me go back again, though, to my question about the financial institutions. It was around 1969 or 1970—I may be off a year—when we were considering the legislation. The argument of the financial institutions runs something as follows.

Most of the women applying for credit, or many of them, are divorcees. Divorce was common then, but not as prevalent as it is now. They normally have not been in the marketplace. They have children. They may or may not collect alimony from their husbands and, as a rule of thumb, they do not make as much money and their credit is riskier. Therefore, we are going to lump them together as women applying for credit and apply a different standard in terms of whether we will give it or not.

That is a thumbnail layman's explanation of the statistics. My hunch is the statistics may have been valid if they lumped all women together—certainly women and divorced women—but the Congress said that that is not tolerable in this society.

Assuming that my statement of the statistics is right, although their argument was that this is a fair classification, how does that differ from classification purposes for the auto business?

Ms. WALTERS. I think we are talking about two different things, Senator. When we are talking about access to credit, we are talking about denying women the right to receive credit.

The CHAIRMAN. Or charging them more to receive it than you would charge men.

Mr. O'DAY. The fundamental difference in the auto insurance area is here we are talking about statistics which would demand on a strictly analytical basis that women should pay less rather than more.

The CHAIRMAN. I understand the difference, but I am curious about the intellectual difference. Their statistics showed women were worse credit risks. Your statistics show that they are better

insurance risks. We said we are not going to let you discriminate against women simply because on the average they are worse credit risks.

I want to know how that is intellectually different from saying you cannot discriminate against men because on the average they are worse insurance risks.

Ms. WALTERS. Ultimately, Senator, I think what you are faced with ~~with~~ the rest of the Members of the Senate and your colleagues on the House side, is making ultimately a social judgment. Should we outlaw this type of distinction or should we not?

I believe you have to make those decisions legitimately, but you must do so as you did in that case. You must do so in this case recognizing full well what is the economic impact and only when you fully recognize the economic impact, then if you make the judgment, so be it. Then you have good legislation.

In this instance what disturbs me as an actuary is I see some people trying to pretend that some of these economic effects are not there or are not valid. I do not think that makes for good legislation, Senator. I believe your statements—you have made several now on several occasions and I think that shows the correct attitude, that if one is going to support this legislation then you must do so recognizing the effects and be willing to accept them, but do not try to explain them away.

The CHAIRMAN. Recognizing the result that some women's insurance, those between the age of 18 and 25, some are going to go up.

Ms. WALTERS. That is correct.

The CHAIRMAN. Some are going to go down.

Ms. WALTERS. [Nods affirmatively.]

The CHAIRMAN. I do not know anyone who denies that, including, frankly, the women's groups that have testified. I do not know of any who have denied that individual cases will vary because people will be rated on individual merits rather than classification.

Ms. WALTERS. Unfortunately, at the last hearing a couple of weeks ago there have been suggestions fairly recently that these differences, these real differences, will not result in women having to pay more for auto insurance. My only statement and my only purpose in being here is to talk to those statistics and to say that it is an undeniable fact that women are lower risk drivers than males and there is no substitute for that.

So if the legislation is passed, women will have to pay more for auto insurance. The next step may be, so be it. I am willing to accept that. Then that is fine. I am not here to tell you how to make those social judgments. The rest of the gentlemen on this panel may.

The CHAIRMAN. Penny.

Ms. FARTHING. You inquired about the equal credit opportunity debate of about a decade ago. At that time I was on the staff of the National Trade Association and, frankly, I do not think the analogy that you would like to draw applies here. At that time women did not receive credit. Frequently, the reason was that they had not been in the marketplace and there was no credit history.

What we would like to do in insurance, what we have been doing, particularly with regard to auto insurance, is to allow women to use the insurance history they have established as a

class, to use that as a basis for rating their policies. This legislation would not allow us to do that. We simply want to continue using women's good insurance history to rate their policies.

The CHAIRMAN. But that is exactly what the financial industry wanted to do in reverse. You said someone comes into the market, 30 years of age, divorced with no previous credit history. The financial industry wanted to use the generic record of women as credit risks to apply to this woman applying.

Ms. FARTHING. I am not sure that is a persuasive analogy. We have generations of rating history which we brought out here that shows that in fact women are good risks for auto insurance and we want to give them the benefit of that history.

The CHAIRMAN. Senator Gorton.

Senator GORTON. No questions.

The CHAIRMAN. Tom, and again you can pass this off if you want, you are familiar with the response, the letter to Jim Florio of April 5 from New Jersey again rebutting your statistics.

Mr. O'DAY. Yes; I am.

The CHAIRMAN. I am not here to quarrel with whether the letter is right or wrong, but I would like you to address yourself to that letter that I will put into the record just prior to your answering of this question.

[The letter follows:]

STATE OF NEW JERSEY,
COMMISSION ON SEX DISCRIMINATION IN THE STATUTES,
Trenton, N.J., April 5, 1983.

Hon. JAMES J. FLORIO

*Chairman, Subcommittee on Commerce Transportation and Tourism,
Washington, D.C.*

DEAR CONGRESSMAN FLORIO: In response to my testimony at the February 22, 1983 hearings held by the Commerce, Transportation and Tourism Subcommittee on H.R. 100, the Alliance of American Insurers sent the Subcommittee a letter challenging the Commission's automobile insurance analysis. That letter contains inaccuracies and misrepresentations which the Commission has clarified in the attached reprise.

The Alliance states that the Commission's conclusion that sex is not a valid predictor of risk was premised on the "average accident rate per mile driven" and furthermore that "the average accident rate per mile driven is an irrelevant statistic" because "accident rates do not increase in the same proportion" as does mileage.

Our conclusion is not, as the Alliance claims, that women have more accidents per mile, rather it is that male and female accident rates per mile are not significantly different. This finding is not based, as the Alliance implies, on the average accident rate per mile driven unadjusted by the decreasing rate of additional accidents per additional mile, but upon an adjustment for the decreasing rate of accidents per mile driven. (see Commission report on "Sex Discrimination in Automobile Insurance" p. 5).

The study cited by the Alliance in their letter is older than the studies utilized by the Commission and does not differentiate between persons of different ages. Indeed, the average age of the study's drivers is over 30.¹ Sex based rate differentials are not charged to insureds, for the most part, after age 30.

The Alliance's comparison of the data is misleading. They talk in terms of mileage, but present results in terms of accidents per driver. On a per mile basis, males on average had .017 accidents per thousand miles, females had .023 accidents per thousand miles. Males on average had 26 percent fewer accidents than women on a per mile basis; in contrast the Alliance claims that females had 47 percent fewer accidents. Thus the Commission reaffirms its position that male and female drivers' accidents per mile, when properly adjusted, are substantially similar.

¹ Licensed teenage males outnumbered licensed teenage females at the time of the study, and teenage males were also found to have been licensed at younger ages. The data therefore contained a much greater proportion of male teenage driving experience. The female data contains a higher mix of older drivers than the male group. As a result, the male accident data are skewed by the greater mix of younger drivers. Young drivers are reported to be four times worse, on a per mile basis, than adults. See Department of Insurance Report (New Jersey) at 116-117.

I would appreciate your including this letter and the attached² reprise to the Alliance's rebuttal to the automobile section of the Senate Commerce Committee report, as a part of the record on H.R. 100.

Thank you again for inviting me to participate in the Subcommittee's hearings on H.R. 100. If I can provide you or any other subcommittee member with further information supporting the necessity of the legislation's enactment, please feel free to contact me.

Sincerely,

WYNONA M. LIPMAN, *Chair.*

Mr. O'DAY. Without at this moment responding to it, if that is all right, if we could make our full response the same way for the record, let me just say this. We find it kind of interesting. The original New Jersey Commission and your report of last year would seem to indicate that if you somehow adjust the mileage that miraculously young women become worse drivers than young men.

We challenged that at the time and we continue to challenge that. We think all the statistics would indicate that young women are better drivers and deserve the low rate. The New Jersey Commission apparently continues to believe somehow that by some manipulation they become worse drivers.

There was testimony given at your previous hearing that, to the contrary, women are better drivers at every mileage given. That was from a proponent of the bill. You yourself, of course, have said several times it does not make any difference what the statistics show, this change needs to be made.

May I make a comment somewhat related to this, because it comes to our old hometown. The Portland, Oregonian editorialized last week on the subject. It was a good editorial, I think a thoughtful one. It was from their editorial page editor, a man I think you know, Robert Landauer.

He said in there, in part, that the bill goes too far, that this ethical cloak—and he is referring to the pension side of the bill—is too large and it fits badly with the real world. He goes on to say it ought to be reconsidered, that the bill's other impacts—referring to the individual lines and individual contracts—that it distorts the purposes of insurance, and he concludes—and I think it is important to watch his conclusion—he says:

Particularly as it relates to the property and casualty insurance fields, this sex-blind rating risk for insurance would benefit relatively few, penalize almost everyone, and neither reduce discrimination nor advance equality in any useful way.

The CHAIRMAN. As a matter of fact, I saw the editorial on the day it came out. Let me read just part of this letter you will respond to so the audience will know what the letter is.

This is a letter to Congressman Jim Florio from Senator Wynona Lipman, the chair of the Commission on Sex Discrimination, and this is part of what the letter reads, and it is referring to the alliance study.

Our conclusion is not, as the Alliance claims, that women have more accidents per mile. Rather, it is that male and female accident rates per mile are not significantly different. This finding is not based, as the Alliance implies, on the average accident rate per mile driven, unadjusted by the decreasing rate of additional accidents per additional mile driven [see Commission report on sex discrimination in automobile insurance, page 5].

² The attached was not reproducible and is in the Committee files.

The study cited by the Alliance in their letter is older than the studies utilized by the Commission and does not differentiate between persons of different ages. Indeed, the average age of the study's drivers is over 30. Sex-based rate differentials are not charged to insureds, for the most part, after age 30.

The Alliance's comparison of the data is misleading. They talk not in terms of mileage, but present results in terms of accidents per driver. On a per mile basis, males on the average have .017 accidents per 1,000 miles; women have .023 accidents per 1,000 miles. Males on the average have 26 percent fewer accidents than women on a per mile basis. In contrast, the Alliance claims that females had 47 percent fewer accidents.

Thus, the Commission reaffirms its position that male and female driver accidents per mile, when properly adjusted, are substantially similar.

Tom, if you want to reply to that in writing, it is fine with me.

Mr. O'DAY. Let me say one thing that is in our statement. If you follow the logical conclusion of what New Jersey seems to be saying, the more miles you drive, the safer a risk you are. In a sense that is what they seem to be saying in their statement. I know Mavis here has done a study of the New Jersey Commission and that is just illogical that the more miles you drive the better the risk you become.

It defies logic. It also defies what the statistics show, that when you look at women at every level of miles driven and compare them side by side—that is, the male driving 10,000, the females driving 10,000, or 50,000—the females have significantly better driving and accident records. That is for all females.

And then when you extract out of that, as our testimony does, and this testimony in front of you does, just the young females under 30 or under 25, more importantly, then the difference becomes even larger.

The New Jersey Commission somehow thinks that is not real. They have done whatever they are doing. Maybe Mavis would like to add something.

Ms. WALTERS. Senator, could I add one thought to what Tom has said, and it is if you follow through with the logic that was used by the New Jersey Commission in their study, they would find, for example, that those who drove between 10,000 and 15,000 miles per year would pay one-fifth—that is, only 20 percent—of the amount of premium that would be paid by those who drive up to 2,500 miles per year.

Someone who drove 2,500 miles per year would pay, for example, about \$100 per year for insurance. Someone who drove 15,000 miles would pay only \$20. That is the logic of their approach. We will, of course, submit a formal statement for the record.

The CHAIRMAN. Let me address this to either Mr. Wilson or Mr. Jones. One of the problems that the life insurance industry poses to us is if we change the rules now they have a lifetime of having written on an actuarial basis men and women, and if we make our law retroactive it will be financially devastating to them because they have not written on that basis.

Would it make any difference to the automobile industry from the standpoint of cost or profit if we changed these rules? I premise this on the assumption that not many policies are written for more than, I would take a guess, 6 months or 1 year. So do you have the same argument as far as this is concerned that the life insurance industry does?

Mr. WILSON. No; I do not think so. Most of our policies, say 90 percent of our policies, now are 6-month policies, and the change would be—you could not change it during a policy term. Usually you change at the renewal date.

The CHAIRMAN. So their argument is unique. They have a lifetime invested and they will have years of payout based upon the rates they have charged.

Mr. WILSON. Right.

The CHAIRMAN. I have no more questions.

Senator Gorton.

Senator GORTON. [Nods in the negative.]

The CHAIRMAN. Thank you very much. You have been a good panel. We appreciate it.

Our next witness is Mr. Jasper Jackson, deputy public advocate for the Division of the Rate Counsel, New Jersey Department of the Public Advocate.

Mr. Jackson, good morning. Senator Lautenberg asked me to tell you he had hoped he could be here this morning. He is at another hearing.

**STATEMENT OF JASPER J. JACKSON, DEPUTY PUBLIC ADVOCATE
FOR THE DIVISION OF THE RATE COUNSEL, NEW JERSEY DE-
PARTMENT OF THE PUBLIC ADVOCATE**

Mr. JACKSON. Thank you. Mr. Chairman and members of the committee, I am here today speaking on behalf of Joseph H. Rodriguez, the public advocate of the State of New Jersey.

I believe—

The CHAIRMAN. Could you tell us what that is?

Mr. JACKSON. Yes. I believe the Department of the Public Advocate still holds the singular distinction of being the only cabinet-level State department ombudsman and agency watchdog in the Nation. Essentially it is our task and duty to represent the public interest of the citizens of New Jersey before any State agency or regulatory authority with respect to any issue that may have an adverse impact on the citizens of New Jersey.

The CHAIRMAN. I want to make sure the record indicates you are indeed a part of the New Jersey State government, because the name is very close to some private citizen organizations that exist.

Mr. JACKSON. Yes; we are. And, as I indicated, I believe, in my previous comment, the public advocate himself is a cabinet officer. The public advocate of the State of New Jersey wishes to urge its full support for S. 372, the Fair Insurance Practices Act, which is under consideration by this committee.

We recognize that insurers do not generally differentiate in insurance pricing and availability on the basis of race, color, religion, or national origin. However, they do differentiate on the basis of sex, both in terms of pricing and availability.

The New Jersey Department of the Public Advocate has a long-standing interest in the issue of sex discrimination in insurance. Specifically, we are charged by statute, through our Division of Rate Counsel, with representing the public interest in insurance

rate proceedings in our State. Through our involvement in the insurance rate regulatory process, we have become acutely aware of the unfair, dramatic impact sex has as a rating factor in automobile insurance pricing.

Today, therefore, we will limit our comments to a review of the impact of sex as a rating factor in New Jersey's automobile rating laws.

The CHAIRMAN. Mr. Jackson, let me say this. As you well know, we are limiting witnesses to 5-minute statements. Your entire statement will be in the record and if you could orally abbreviate it, we would appreciate it.

Mr. JACKSON. I will do so.

We fully believe the prohibition of sex as a rating factor is an idea whose time has come. We are proud to state that our department has been in the vanguard in addressing this issue in New Jersey. Not only were we involved in a 89-day hearing conducted by our State Department of Insurance, which examined this issue, but we have also testified on this issue before a State senate commission on sex discrimination, and the statutes of various other legislative subcommittees.

We commend this committee for taking a broad-based approach to this problem. The automobile insurance industry's current use of sex as a rating factor has had an adverse impact on the rates of all young drivers and those drivers who carry a son, daughter or other youthful driver on their auto policies, urban and suburban alike.

With heightened consciousness of gender classification spawned by the equal rights movement, there is a growing awareness that the automobile and insurance industry may be engaging in unfair discriminatory practices making broad-based gender distinctions in the setting of premiums. Because of the unique nature of automobile insurance, which necessitates a categorization of risks, the propriety of sex as a risk classification has generally escaped proper evaluation.

Because the problem of sex discrimination in automobile insurance ratemaking is so complex, it is essential one understand the history of the classification process. The use of highly refined demographic variables, such as age, sex, and marital status in the rating of automobile policies is a phenomenon of the last 30 years. Prior to 1950, insurance underwriters used four and then five classification grouping defined by driving record, usage and the presence of operators under 25 years of age.

In the early 1950's, however, new entrants into the field, known as direct writers, meaning those companies who utilized company employees rather than independent insurance agents, developed new marketing strategies to sell insurance policies. This new marketing approach—that is, direct writing—and the further refinement of classification plans reduced company acquisition expenses while targeting specific segments of the market, thus permitting nontraditional companies to offer lower prices to selected segments of the market.

Prior to the entry of direct writers, such as State Farm and Allstate, into the personal automobile insurance market, all automobile insurance was sold and purchased from stock insurance companies—that is, companies who utilized agents rather than em-

ployees to produce new policyholders and service existing policyholders.

Direct writers, by eliminating agent's commission and introducing refined classification plans which utilized classification such as age and sex in addition to the usage classifications already in existence, were able to secure a foothold in the automobile industry by offering lower premiums to a selected group of drivers.

The advent of direct writers caused all companies to become more competitive. This competition, however, took place not in terms of operational and managerial efficiency but through a risk selection process. Apparently, therefore, the genesis of the use of status classifications such as sex and age was in their use as marketing tools to enable insurers to get a foot in the market or maintain market shares which had already been secured.

Of course, the consequence of this kind of competition was higher rates for those segments of the market not considered preferred by the insurers. Over a period of years, competition has caused further and further refinements to the classification system. Essentially, in New Jersey the companies utilize the ISO class plan, which was known as the 217 class plan.

When you use the 217 class plan in a State such as New Jersey and the primary factors are age, sex and marital status, you develop about 234,000 different rating possibilities. When you throw in type of car, driver usage, and a few other items, you develop over 1 million rating possibilities in a State in which there are slightly less than 4 million drivers.

We believe that given the magnitude of rating possibilities there is no way the resulting rates could be statistically credible. Premium rates paid by policyholders are supposed to reflect the company's burden of insuring the individual plus provide a reasonable profit to the company.

The current debate in automobile classification centers on how one accurately measures this individual burden to the company. It is the public advocate's position that because sex is an immutable characteristic its use as a rating factor to distinguish between groups of people should not be permitted unless grounded in strong scientific evidence. Burdening members of one sex would seem to violate the basic legal concept.

Is that my time?

The CHAIRMAN. Go ahead and conclude as quickly as you can.

Mr. JACKSON. That an individual should not have to bear legal burdens for which he or she is not individually responsible. Any evidence suggesting the need to treat men and women differently must be sound not only from an actuarial and/or statistical basis but also from a public policy perspective.

On the basis of the available evidence, it appears that not only do sex-based classifications fail as reliable indicators of one's accident likelihood, but they are also not the result of objective, systematic research designed to identify such reliable indicators. Instead, subjectively based competitive marketing techniques that single out more of the cream of the crop have determined which variables are used as rating factors by the industry.

Although it has produced no study to substantiate it, the insurance industry asserts that the rates for young male and female

drivers should be different because young males have a higher accident rate than young female drivers. Independent research confirms that male teenagers average twice as many accidents as female teenagers.

The CHAIRMAN. Mr. Jackson, let me say again this entire statement will be in the record, so you do not need to read from the statement.

Mr. JACKSON. OK. I think I can end the statement, Mr. Chairman.

Essentially what we found in New Jersey—I will end it this way—the industry contends that it has actuarial justification for sex as a rating variable, but there appears to be a vast difference between what is considered actuarial credibility and statistical validity. For instance, actuaries seem to be interested only in numbers, whether or not they generate enough numbers to produce significant differences consistently over time.

The statistician seems to be concerned with identifying criteria for placing individuals into certain groupings. For instance, the automobile classifications are based upon national statistics. I believe we have essentially 100 million drivers in the country. Mathematicians, statisticians, and even actuaries say that given the magnitude of the universe of the numbers with which they are dealing, you could take and segregate people on the basis of almost any criteria, such as the color of clothes they wear, the color of hair, and you will track on an annual basis significant differences over time between groups.

When you set up a class, the purpose for which you are setting up the class should control. When you observe the actuarial classifications in automobile insurance, for instance, you take females and you compare them to males. The groupings appear not to be homogeneous. In other words, there is such a wide dispersion of accident likelihoods, rather than being——

The CHAIRMAN. I have got to ask you to wind down.

Mr. JACKSON. All right, I will end the statement. Essentially, Mr. Chairman, we believe that there is no statistical justification for the sex-based discrimination in automobile insurance pricing nor in any other insurance pricing which we have observed, and we believe that it should be prohibited.

The CHAIRMAN. Now, "we" is the public advocate's office?

Mr. JACKSON. Yes.

The CHAIRMAN. What does the New Jersey insurance commissioner think?

Mr. JACKSON. I really could not speak for the New Jersey insurance commissioner.

The CHAIRMAN. Are you at the moment involved in suing the insurance commissioner or suing the State?

Mr. JACKSON. No; at the moment we are involved in the previous insurance commissioner. Commissioner Sheeran issued an order in April 1981 prohibiting the continued use of age, sex, marital status, and other criteria as rating factors. The industry appealed the order and the order is still on appeal.

At this time the current commissioner on insurance is defending the prior order along with my department.

The CHAIRMAN. And that is midway along the New Jersey court system at the moment?

Mr. JACKSON. Yes, it is.

The CHAIRMAN. The present insurance commissioner is on the same side as that of the previous insurance commissioner and you are allied with the insurance commissioner in that suit?

Mr. JACKSON. Yes.

[The statement follows:]

STATEMENT OF JASPER J. JACKSON, DEPUTY PUBLIC ADVOCATE, DIVISION OF RATE COUNSEL, DEPARTMENT OF THE PUBLIC ADVOCATE

The Public Advocate of the State of New Jersey wishes to urge its full support for S. 372, the "Fair Insurance Practices Act," which is under consideration by this Committee. We recognize that insurers do not generally differentiate in insurance pricing and availability on the basis of race, color, religion or national origin. However, they do differentiate on the basis of sex, both in terms of pricing and availability.¹ The New Jersey Department of the Public Advocate has a long-standing interest in the issue of sex discrimination in insurance. Specifically, we are charged by statute, through our Division of Rate Counsel, with representing the public interest in insurance rate proceedings in our State. Through our involvement in the insurance rate regulatory process, we have become acutely aware of the unfair dramatic impact sex has as a rating factor in automobile insurance pricing.² Today, therefore, we will limit our comments to a review of the impact of sex as a rating factor in New Jersey's automobile insurance rating laws.

We fully believe that the prohibition of sex as a rating factor is an idea whose time has come. We are proud to state that our department has been in the vanguard in addressing this issue in New Jersey. Not only were we involved in an 89-day hearing conducted by our State Department of Insurance which examined this issue but we have also testified on this issue before our State's Senate Commission on Sex Discrimination in the Statutes and various other state legislature subcommittees. We commend this Committee for taking a broad-based approach to this problem. The concept of insurance ratemaking is indeed complex. Thus we will attempt today to explain the importance of this bill by focusing our discussion on the impact of the use of sex as a rating factor in automobile insurance ratemaking.

The automobile insurance industry's current use of sex as a rating factor has had an adverse impact on the rates of all young drivers and those drivers who carry a son, daughter or other youthful driver on their auto policies, urban and suburban alike. With heightened consciousness of gender classifications sparked by the Equal Rights movement, there is a growing awareness that the automobile insurance industry may be engaging in unfair discriminatory practices by making broad-based gender distinctions in the setting of premiums. Because of the unique nature of automobile insurance, which necessitates a categorization of risks, the propriety of sex as a risk classification has generally escaped proper evaluation. Because the problem of sex discrimination in automobile insurance rate-making is so complex, it is essential that one understand the history of the classification process both in New Jersey and countrywide.

The use of highly refined demographic variables (age, sex, marital status and related classifications) in the rating of private passenger automobile policies is a phenomenon of the last thirty years. Prior to 1950, insurance underwriters used four and then five classification groupings defined by driving record, usage and the presence of operators under 25 years of age. In the early 1950's, however, new entrants into the field, known as direct writers, developed new marketing strategies to sell insurance policies. State Farm, which represents 12 percent of New Jersey's automobile insurance market concentrated on attracting rural drivers. Allstate, which represents 22 percent of all New Jersey drivers, sold policies in Sears stores and initiated a classification plan consisting of 10 classes. This new marketing approach (i.e., direct writing and further refinement of classification plans based on demographic variables) reduced company acquisition expenses while targeting specific

¹ In the context of availability, this discrimination takes place with respect to an insurer's decision to voluntarily accept a risk as opposed to involuntarily writing the risk through an Assigned Risk Plan or other residual market mechanism.

² The elimination of sex as a rating factor will result in higher rates for women.

segments of the market, thus permitting nontraditional companies (direct writers) to offer lower prices to selected segments of the market.

Prior to the entry of direct writers, such as State Farm and Allstate, into the personal automobile insurance market, all automobile insurance was sold or purchased through "stock" insurance companies, i.e., companies who utilized agents rather than employees to produce new policyholders and to service existing policyholders. The direct writers by eliminating agent's commissions and introducing refined classification plans which utilized status classifications, such as age and sex, in addition to the few driving record and usage classifications already in existence, were able to secure a foothold in the marketplace by their ability to offer lower premiums to selected groups of drivers.

The advent of direct writers caused all companies to become more competitive. This competition, however, took place not in terms of operational and managerial efficiency but through the risk selection process. The stock companies began to utilize the status-class distinctions also to provide lower rates to the "targeted groups" considered to be the "cream of the crop" in order to stem the loss of their market shares and thus avoid a type of adverse selection, where they would be left with only the higher-rated policyholders. Apparently, therefore, the genesis of the use of status classifications, such as sex and age, as rating factors was in their use as marketing tools to enable insurers to gain a "footing" in the marketplace or to maintain marketshares which had already been secured. Of course, a consequence of this kind of competition was higher rates for those segments of the market not considered to be "preferred" by the insurers.

Over a period of years, competition has caused further and further refinements to the classification system. Today there are 202 different classifications pertaining to youthful drivers. In fact, by combining information on a driver's sex, age, marital status, use of car and place of residence, an insurer can come up with as many as 234,360 different rates for identical coverages. After factoring in information about the kind of car one drives, there are over one million rating possibilities for identical coverages. This situation obtains in a state where there are only 4 million drivers. How can the resultant group loss experience be statistically valid and/or actuarially credible?

Furthermore, under New Jersey's current automobile classification system, the sex of an insured only becomes significant if the individual is a youthful driver (drivers aged 17 through 29).³ In proceedings conducted on the accuracy and equity of current automobile rating factors by the New Jersey Department of Insurance in 1979, it was discovered that over 90 percent of all classification distinctions are applied solely to youthful drivers. This situation obtains even though the industry possesses statistical data which indicates that males to age 50 produce significantly different accident costs at five-year intervals.

What do these different classifications mean? The use of status classification variables, such as sex, usually translate into higher prices for the affected individual. For example, at the beginning of 1979, a young urban male driver might have paid \$2,500 for a full package of automobile insurance coverages, while an adult in a suburban territory, with the same car, driving record and identical coverage might have paid as little as \$250. This spread of as much as 10 to 1 in rates for identical coverage is caused by rate classification, and is primarily due to the use of the sex and age factors.

Premium rates paid by policyholders are supposed to reflect the company's burden of insuring the individual, plus provide a reasonable profit to the company. The current debate in automobile classification centers on how one accurately measures this individual burden to the company. It is the Public Advocate's position that because sex is an immutable characteristic, its use as a rating factor to distinguish groups of people should not be permitted unless grounded in strong scientific evidence. Burdening members of one sex with unjust disabilities would seem to violate the basic legal concept that an individual should not have to bear legal burdens for which he or she is not individually responsible. Any evidence suggesting a need to treat men and women differently must be sound, not only from an actuarial and/or statistical basis, but also from a public policy perspective; for there is a line of legal decisions supporting the proposition that mere statistical evidence of increased accident incidence among young male drivers may be insufficient to justify classification on the basis of sex in setting rates.⁴

³ With only two exceptions marketwide—ISO's classification for the female 30 through 64 who is the sole operator in the household, and Allstate's single male 30 through 49 who use the car more than half of the time—the sex variable applies exclusively to under-30 drivers.

⁴ See *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975) and *Los Angeles Dept. of Water & Power v. Manhart*, 98 S.Ct. 1370 (1978).

The purpose of risk classification should be to stratify classes of insureds by likelihood of accident involvement. At the conclusion of the New Jersey Department of Insurance proceeding on automobile insurance classification previously mentioned, it was found that all of the current classification schemes in use in New Jersey, in spite of their intricacies, could account for or explain no more than 25 percent of the total variation in risk between insureds. It is clear, therefore, that sex-based variables, along with all other variables currently in use, fail miserably as accurate predictors of an individual's expected costs to an insurer. Moreover, our Department of Insurance's findings were consonant with those of the Stanford Research Institute, which conducted a study sponsored by the industry to determine whether insurers' current classification techniques were sound.

On the basis of the available evidence, it appears that not only do sex-based classifications fail as reliable indicators of one's accident likelihood, but that they also are not the result of objective systematic research designed to identify such reliable indicators. Instead, subjectively based competitive marketing techniques to single out more of the "cream of the crop" have determined which variables are used as rating factors by the industry. In the same Insurance Department hearing previously discussed, the Commissioner of Insurance found that the insurance industry's establishment of a sex variable derives from assumptions about the stereotyped behavior patterns of males and females. Young single males are said to have a penchant for recklessness and a drinking and driving social life which keeps them on the road late at night. Youthful female drivers are said to drive less because boyfriends or fathers would normally be the driver. By implication they are supposed to be less aggressive behind the wheel and more frequently at home. Married females are presumed to let their husbands do the driving and are exempt from separate classification even under multicar policies.

Such subjective impressions about personality and lifestyle characteristics play a major role in company determinations regarding which applicants should and should not be accepted as customers and what prices they pay. We believe that these impressions should not be permitted to govern pricing. Emotional instability is not uniformly characteristic of youthful male drivers nor is it confined solely to that age category. Individual lifestyles are highly diverse and societal norms prescribing roles for the sexes are rapidly changing. Attempts to categorize people on the basis of superficial factors of this sort err by including in the same classes those who do not fit an assumed stereotype.

Although it has produced no study to substantiate it, the insurance industry asserts that the rates for young male and female drivers should be different because young males have a higher accident rate than young female drivers. Independent research confirms that male teenagers average twice as many accidents as female teenagers; but because teenage males also drive twice as much on average as teenage females, there is no difference in accident rate between the sexes in the teenage years. A second study confirms that accident rates for males and females per 100,000 miles driven are virtually identical between ages 17 to 29, the years in which sex classifications are primarily applied. Females who drive as much as the average male therefore enjoy the lower rates attributable to the average low mileage of other females; and males who drive below average amounts for their group are penalized. Herein lies a prime example of the discriminatory effect of sex-based classifications.

The problem with the sex classification distinction in automobile insurance rate setting is not the absence of statistical support for the rate differentiation,⁵ but rather that industry convenience in using the classification should not be said to transform the classification into one that is legally and/or socially acceptable. Although grouping on the basis of gender is a convenient, simple and efficient way to

⁵ Indeed, as the Stanford Research Institute concluded in its industry sponsored study on insurers' classification techniques, it is easy to identify groups of policyholders with different loss experience. That is, there are groups that from year to year have losses consistently and significantly different from each other and from the overall average. In fact, it is the converse that is difficult; care must be taken if one wants to draw a representative sample of insureds from the overall population. Thus, if we pick any characteristic, such as age, sex, weight of the insured, or even the color of his car or hair, and if the number of drivers falling in each category is sufficiently large, we can observe significantly different average experiences of each group's expected costs. However, while there is indeed different experience between groups within each group there exists an extremely wide range of driver accidental likelihoods. Therefore, is it fair and equitable to base an individual insured's premium solely on group statistics such as these, which are beyond a driver's control and bear no demonstrable relationship to one's driving ability.

divide people into risk categories that produce different loss potentials, it is established that the Constitution recognizes higher values than speed or efficiency.

Indeed, inasmuch as many states, like New Jersey, compel the purchase of insurance as a means of carrying out the state's public policy in compensating accident victims, it becomes imperative that such sex-based discrimination be eradicated. Even the women's groups which testified before our State's Commission on Sex Discrimination in the Statutes agreed that sex should be prohibited as a rating factor although recognizing that the result would mean higher rates for women.

Additionally, the elimination of sex as a rating factor was recommended by the Rates and Rating Procedure Task Force of the National Association of Insurance Commissioners. The report concluded that: " * * * the use of age, sex and marital status for purposes of classifying automobile insurance risks lacks sufficient justification and therefore violates public policy standards regarding unfair discrimination." The Task Force stressed the importance of the unsupported value judgments of the insurers in selecting among the range of statistically viable classifications. Further, it concluded that alternate rating factors exist which perform equally as well in statistical terms as sex (age and marital status) and which are considerably more acceptable for rating purposes from a public policy perspective. Recently, both Massachusetts and Pennsylvania have prohibited sex classifications as unfairly discriminatory.

It must be noted that other means exist for distinguishing between insureds who legitimately represent poorer risks to the insurer. In establishing differences among insureds, we believe it is preferable to measure driver experience, number of operators of vehicles, annual miles driven and driver performance records. In this way, subjective criteria such as sex are excluded and the aforementioned criteria may provide a more objective basis for establishing rates.

In sum, we think that the above commentary provides evidence of the need to eliminate sex-based classifications in the insurance industry. We shall not take all of this Committee's time to examine sex discrimination in other aspects of insurance (e.g., health, life, disability, etc.) but hope that this short microscopic look at the effect of sex-based distinctions in automobile insurance will provide sufficient support for the changes advocated in S. 372.

We thank this Committee for the opportunity to present our views today. Our departmental staff will be at your disposal should this Committee require additional information.

The CHAIRMAN. Thank you. I have no further questions. I appreciate, Mr. Jackson, your having come.

The hearing stands adjourned.

[Whereupon, at 11:05 o'clock a.m., the committee adjourned, to reconvene upon the call of the Chair.]

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FAIR INSURANCE PRACTICES ACT

THURSDAY, MAY 19, 1983

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The committee met, pursuant to notice, at 9:30 a.m. in room 253, Russell Senate Office Building, Hon. Bob Packwood (chairman of the committee) presiding.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. The committee will come to order, please.

This is the last in a series of hearings on discrimination in insurance. I think the issues are reasonably well known to most of those in the audience today. I will say this, I hope we are not getting into the kind of battle that we had on withholding, although I am afraid it is coming down to that.

I see that the Committee for Fair Insurance Rates is circulating a letter, and I am not going to comment on the alleged facts stated in the letter. I think they are wrong. But the Constitution in terms of freedom of speech and freedom of the press does not guarantee anything has to be fair. It just has to be free.

But in this packet being sent out is a letter addressed to each member of this committee, and I know that it is being done with Congressman Florio's committee also, and it is a letter that looks like it has been composed by the person sending it. It is actually sent out by the organization circulating this, and they indicate:

We have put in this sample letter for you, although it would be best if you could write your own letter in your own words. I have enclosed a sample letter because time is short. Please sign this letter with a personal note if possible or return it in your own envelope to your Senator, whose address appears in this letter, and mail it today.

P.S. Because time is short, you might choose to call us toll-free at 800-528-6050, Operator 372, and authorize us to send, at no cost to you, this same public service message on your behalf to your Senator.

In other words, we may be flooded with a series of letters that people do not even really know they have sent, attempting to give to this committee, and to this Congress the impression of qualified public opinion, when all we are going to get is a quantity of letters that are in no way accurate or a sample of a valid cross section of public opinion.

And in the withholding issue Congress buckled under to that, and we might in this situation. But I would say to the business community that you are asking to die by the sword if you want to live by the sword. One day Congress will rise up in wrath against

this kind of tactic, and it may not happen this year and it may not happen next year, but when it happens all of business is going to suffer and you are going to have only yourself to blame.

Our first witness today is Congressman Florio, whom I am delighted to have with us. He and I have been allies on a variety of subjects in the past and I am sure, Jim, we will be on a great deal of subjects in the future.

Congressman.

**STATEMENT OF HON. JAMES J. FLORIO, U.S. REPRESENTATIVE
FROM NEW JERSEY, ACCOMPANIED BY GREY STAPLES**

Mr. FLORIO. Thank you, Senator.

I have with me Grey Staples from my staff, and I appreciate the opportunity to come and share with you a few thoughts. In the interest of conserving the committee's time, I would ask that my statement be placed in the record.

The CHAIRMAN. It will be in the record in full.

Mr. FLORIO. I would just like to raise a couple of points. By this time I am sure everyone is aware of the fact that this bill, your bill as well as our bill, H.R. 100, sponsored by Chairman Dingell, embodies the view that it is inappropriate to discriminate in the field of pensions, annuities and insurance; that inappropriate discrimination is not acceptable; and that sex-based insurance systems are inappropriate, in that there are much more effective, accurate and less socially reprehensible means of determining predictability for the insurance industry; and, that this view traditionally has been opposed by the industry, I think in a somewhat less than progressive way.

Therefore, many of us were extremely happy when some of the more progressive elements of the insurance industry came forward earlier this year and stated that they were willing to review their approach to opposing this type of a measure on principle and start to work on accepting the principle, if there could be some assistance and adjustment in the legislation to cushion the economic impact associated with going into a new era.

When suggestions were made about specific causes of concern on the economic impact, a number of people—proponents of the legislation, members of the Congress, our staff, the majority staff and minority staff on this side of the Congress—took part in extensive negotiations to focus on the legitimate concerns of the industry with regard to potential economic disruption that could occur from the transition to neutral gender based industry practices.

The discussions were fruitful and in fact we thought an agreement had been reached. We thought there were three areas that should be addressed, and they were in fact addressed—the question of the time for implementation; the question of topping up, or the so-called retroactivity provision; and then some concerns about individual life contracts.

I—and I think I can speak for Mr. Dingell—reject other proposals that have been offered such as proposals to exempt particular lines of insurance. We felt that if we focused on these three legitimate areas, that we could have a consensus. As I think everyone knows by this point, the less than progressive elements in the in-

insurance industry overwhelmed the progressive elements in the industry and there is now, I understand, a monolithic position that will be presented today on behalf of the industry in opposition to the very principle that these pieces of legislation are based upon; in a sense saying that discrimination is inherently part of the industry. That position will be taken notwithstanding the fact that inappropriate sex-based discrimination is being utilized in the same way that race-based discrimination had been utilized in the past. The industry now apparently takes the position that they cannot accept the basic premise of this legislation.

As you indicated, it appears that negotiation and good faith discussions are beyond the pale of what we can expect. Rather, we can see a massive public relation campaign that borders on intimidation. I have seen some of the ads. I have talked to some of my colleagues who are incensed at the irrational approach that is being pursued by some in the industry.

I would echo your thoughts that the industry in going this way is engaging in a very dangerous policy for the well being of the industry. They will be focusing attention on themselves in a way that they may not like in the years ahead.

Already there have been discussions on our side, some members talking about the continued viability of the McCarran-Ferguson Act. We have had some of the members of the Ways and Means Committee feeling there is a need to look into the system of taxation on insurance companies. I am not saying there is a cause and effect relationship, but to the degree that the industry has demonstrated a lack of sensitivity, they are going to have some attention focused on them, I suspect.

And all I would like to convey to you is that Mr. Dingell has authorized me to say that, whether the industry takes part in discussions or not, it is his decision to go forward with a bill that preserves the key premise of this legislation—that there is no place for inappropriate discrimination in the insurance industry including pensions and annuities—and that the industry can take part or they cannot take part.

And therefore I would just encourage you to go forward in the way that I know you are committed, and you can rest assured that on our side of the Congress we are prepared to cooperate with you in every way possible.

The CHAIRMAN. Jim, let me tell you a thing that absolutely infuriates me, and this is not a generic castigation. I think the American Council of Life Insurance and especially Dick Schweicker and former Governor Holton have negotiated with us in good faith and dealt with us in good faith, and I think some of the major companies dealt with us in good faith in the negotiations that were attempted.

But at the very time that we were attempting to operate in good faith to try to reach a settlement that could accommodate the life insurance companies and accommodate everyone else and accommodate those who wanted this bill, there was an element, a large element in the life insurance industry, that was preparing this advertising campaign at the very time they were negotiating with us, and had no intention of reaching an honorable conclusion with us.

And if there is anything that you and I know in this business, it is that we do not blind side each other, and all we have to go on in most cases is our word. Some of the lobbyists in this town are so good that you know you cannot only trust their word, but if you say to them, give me the other side of the case, they will give it to you better than the other side in most cases.

The life insurance industry doublecrossed us. Not all of them, but they doublecrossed us in carrying out these negotiations at the same time that they were planning.

Mr. FLORIO. Some of the members on our side have drawn the analogy that some of the generals were at the negotiating table while some of the generals were preparing the sneak attack. While the analogy breaks down because the attack didn't occur on Sunday morning at dawn, I still think that may very well be an appropriate analogy.

But let me just say one last thing. And I appreciate that any association has different viewpoints on it and I can even appreciate, having talked to some of the members of the association who are not enthusiastic about the position of the association, but they feel the peer pressure to take a good soldier approach and go along.

At some point, those individuals are going to have to make the decision whether going along resolving that the need to maintain solidarity in the industry is of more benefit than it is harm to them and to the industry. And it may very well be at some point they, that is the progressive elements in the industry, are going to have to make a decision as to whether they want to go on this lemming-like course over the cliff or whether they are prepared to stand up and counsel some good sense and perhaps even at that point indicate publicly that there is a different approach in the industry.

The CHAIRMAN. Well, I want to say to you and to those in the audience that my door is still open for negotiations for those who wish to negotiate. But as far as I am concerned, we are going to attempt to go ahead with the bill with or without them. I would prefer to go with them, but we will go forward with or without.

Mr. FLORIO. Thank you.

[The statement follows:]

STATEMENT OF HON. JAMES J. FLORIO, U.S. REPRESENTATIVE FROM NEW JERSEY

Thank you Mr. Chairman for this opportunity to appear today to discuss the status of H.R. 100, the House duplicate of S. 372. You and I share with many of our colleagues an intense interest in seeing responsible legislation enacted in this Congress which will achieve the elimination of discriminatory practices in the insurance industry. However, in the the last week or so, as the full House Energy and Commerce Committee prepared to mark up H.R. 100, frustrating; and, even unconscionable conduct has been inaugurated by the opponents to this bill. It is my purpose to reassure you these events will not deter us in the House from prompt enactment of this legislation. I am privileged to bring you similar assurances also from Chairman Dingell.

Today you will hear from representatives of the American Council of Life Insurance (ACLI) on their new position on S. 372. I will not try to predict this position, nor to guess at their explanation for taking such a position. However, if press accounts are correct their position will be one of outright opposition to the elimination of discriminatory practices in the insurance industry. This will represent a considerable retreat from the organization's previous position, and will represent a position which I know you will not be able to support anymore than I. For us to support such a position, of course, is to deny the very purpose of the legislation.

When H.R. 100 was reported April 20, without amendments, from the Subcommittee which I am privileged to chair I pledged to my colleagues to investigate concerns they expressed regarding H.R. 100 as drafted. Bipartisan staff discussions began with representatives from the coalition of groups supporting the bill, representatives from the governmental organizations concerned about the bill's financial impact; and, representatives of certain insurance companies. Additionally, we appreciate attendance in these meetings by staff representatives from both the majority and minority sides of Senate. Certain areas of legitimate concern regarding financial impacts of this legislation were identified; and, agreements were reached that it was responsible conduct to make modifications to the bill. Meaningful concessions to ameliorate the financial impacts were made by the groups supporting this legislation. These concessions resulted in proposed changes in the legislation, with which your staff is familiar, that would have met the concerns expressed by the governmental organizations, the representatives of the industry, which concerns were echoed by my colleagues at Subcommittee markup. Despite this progress, the representatives of the insurance industry walked away from these discussions after the ACLI vote May 12. This conduct certainly brings into question what the real industry concerns with this bill might be.

This change in the ACLI position appears to be associated with a well financed campaign by the industry to intimidate members of both Houses of Congress into backing away from support of this legislation. I know you share with me a feeling of aversion to such reprehensible tactics. Honest communication between constituents and their representatives is of course a legitimate part of the Democratic process. What is now underway I suggest is not that process. Of course, each members will have to judge this for themselves.

It is my purpose today to share with you my pledge of redoubled effort to see this important legislation through to passage, and our continuing support for the negotiation efforts to date. The supporting groups have been made a honest and commendable progress in negotiation to eliminate unfair and unnecessary cost of this legislation, without having to compromise then purpose of the legislation. The supporting groups will continue to get our support. If the industry will return to the negotiation process they left, we will welcome them to the table. Yet, we must continue to make it clear that neither their estrangement from the process, nor their well financed negative advertising blitz will prevent passage of this important legislation.

The CHAIRMAN. Thank you, Congressman, for coming over.

Next we will take Mr. Ray Scheppach, the executive director of the National Governors' Association.

I will say to all of the witnesses, your statements will appear in the record in full. We will adhere to the normal rule in this committee of asking you to abbreviate your statement and hold yourself to the 5-minute time rule, realizing that we want to ask questions and that your entire statements will be in the record.

Go right ahead.

STATEMENT OF RAY SCHEPPACH, EXECUTIVE DIRECTOR, NATIONAL GOVERNORS' ASSOCIATION

Mr. SCHEPPACH. Mr. Chairman, I am pleased to be here today to present the views of the National Governors' Association on S. 372, the Fair Insurance Practices Act. Most States have moved already to adopt gender neutral policies in their pension plans, and thus the Governors support the intent of this proposed legislation to end the use of sex-distinct tables in pensions and insurance.

However, we believe that the cost of compliance for States to some of the provisions in the pending legislation could be in the billions of dollars. Therefore, we would like the opportunity to work with you on modifying these provisions.

Mr. Chairman, I would like to talk today about five specific issues: First, the history of State action regarding conversions of State pension plans to gender neutral tables; second, the cost of compliance; third, an overview of the current fiscal condition of

States; fourth, a number of related issues; and finally, some recommendations for changes in the bill.

Of the 50 States, Mr. Chairman, 37 already use gender neutral tables. Three have done this since inception of their retirement systems, 10 converted before the *Manhart* decision, and the remaining 24 have converted since 1978. Of the 37, the current trend has been toward using a weighted average to determine factors and to apply them prospectively. Only three of the States have topped up in total and one State has done so partially.

These data demonstrate that as a group State retirement systems are already well on their way to a full, good faith resolution of this issue.

Some 11 million State and local workers are paying into various retirement systems, and nearly 2.5 million households receive benefits from these systems. Benefits on the order of \$14 billion were paid in 1981, and assets of retirement systems are now about \$250 billion. State and local governments, as employers, paid about \$5.2 billion into retirement systems in 1972 and about \$20 billion in 1981. This is a 15-percent annual increase during that period of time.

Regarding the cost implications of the bill, I would have to say at the outset that we do not have good reliable cost information on what the exact impact or cost to individual States will be. We are currently collecting this information, and as a result of our sample we have made some rough ballpark estimates. We also have received good information from several States.

Your own State, Mr. Chairman, has provided us with useful information. Oregon thinks that the cost of this particular legislation would be in the \$33 million to \$40 million range. Florida officials indicate that it would cost the State about \$112 million to comply with S. 372. In Michigan, the first year cost is estimated to be about \$30 million.

We are also in the process of surveying the 40 largest retirement systems. So far the information tells us, of the 25 that responded, that the cost to those 25 systems would be about \$4.8 billion. Now, this is total unfunded liability, not annual cost.

Based on that sampling of information, our sense is that the cost to States would probably be about \$10 billion or perhaps up to several times that in terms of a total unfunded liability.

Regardless of the precise cost, however, it is clear that the fiscal implications of S. 372 are sizable, primarily from the topping up provision and the retroactivity. These costs would be imposed at a time when States have been facing difficult financial problems, as you are well aware. The 4 years of recession coupled with the Federal budget cuts have left States in a very serious financial situation.

Three years ago, States had surpluses amounting to 9 percent of their general fund expenditures. In 1981 this went down to 5.6 percent. What we are looking at currently is about a 1.5-percent surplus. If we pull out two energy-producing States, Alaska and Texas, however, States in the aggregate are now facing significant deficits.

Partly as a result of their shrinking balances, States have substantially increased their taxes over the last 2 years; 21 States increased taxes in 1982; 34 Governors recommended some tax in-

creases for 1983. Ohio recently raised its income tax rate 90 percent. Michigan recently increased its income tax rate 38 percent.

So, Mr. Chairman, if S. 372 were enacted as written it would compete in State budgets for scarce funds that are needed for education, income security, medical assistance, and other programs.

I will move on to four additional issues that our survey of the States indicates should be mentioned. First, there is some concern about the access to and the cost of insurance. Some experts believe S. 372 could lead to the unavailability of some types of coverage.

Second, there is a concern regarding insolvency of some small insurance companies.

Third, we are concerned that the 90-day effective date does not permit States and private companies adequate time to implement S. 372.

And fourth, the bill unnecessarily limits the ability of States to regulate the business of insurance, as I discuss in my written statement.

In conclusion, Mr. Chairman, the National Governors' Association supports the intent of this legislation. However, Congress should be aware that implementation of the bill as presently written could be very costly to State and local governments. Our current estimate places the cost in a range between \$10 billion and a figure several times that amount.

The most significant provision from a fiscal standpoint is the topping up requirement. Therefore, we strongly believe that States should have discretion in choosing the method of achieving equalization of pension benefits and premiums.

Furthermore, we urge that the retroactive provisions for the proposed legislation be modified to assist in limiting their potential cost. States should have discretion regarding any retroactive application.

Finally, we believe that the effective date of the legislation should be no less than 18 months from enactment in order to permit adequate time for States to revise their practices if necessary, and that State authority to regulate the business of insurance should not be preempted.

Mr. Chairman, with respect to your effort to enhance the fairness of the pension and insurance systems on which citizens rely for their future security, we offer to work with you to assure that enactment of S. 372 creates lasting and workable improvements in the insurance and retirement benefits provided to the public.

Thank you, Mr. Chairman.

The CHAIRMAN. I had the opportunity to read your statement before and let me just rephrase it in my words. Your overwhelming problem is cost. You have some other minor points, but cost is 90 percent of the Governors' concern.

Mr. SCHEPPACH. I would say yes, Mr. Chairman.

The CHAIRMAN. Now, if we could reach a compromise on this bill, amend it in such a fashion to alleviate the State and cities cost problem associated with topping up, do you think the Governors would support it?

Mr. SCHEPPACH. There are some other issues to resolve, but my sense is that probably yes, the Governors would support it.

The CHAIRMAN. I have no other questions.

Jim.

Senator EXON. Thank you, Mr. Chairman.

Let me understand your position and the National Governors' Association if I can, Mr. Scheppach. You, speaking as executive director of the National Governors' Association, do not support S. 372 as it is presently before the committee?

Mr. SCHEPPACH. We support the intent of the legislation. However, we are concerned about the cost that it imposes on States.

Senator EXON. Your statement is very typical, Mr. Scheppach, of most of the witnesses that we have on any bill before the Congress. Generally everyone supports the thrust of the legislation. I think we all do in this particular instance.

But speaking for the National Governors' Association, do you support or oppose S. 372 as presently written?

Mr. SCHEPPACH. If you force me into that position, I might have to oppose it as presently written.

Senator EXON. All right. Now, my second question is with regard to the Association of State Insurance Directors. Usually the Governors of the States rely very heavily on their insurance directors, who are supposedly expert in the matter of the solvency of insurance companies, the fairness of rates, the fairness of the settlement of claims against the insurance companies. And for the most part the insurance directors I have found are individuals with long experience in insurance matters.

Specifically what has been the input to your knowledge of the State insurance directors to their Governors, which I assume has been part of the decisionmaking process as far as the National Governors' Association is concerned. And if you know, could you state for the record what is the opinion of the State insurance directors as individuals or as an association with regard to S. 372 as it is presently written?

Mr. SCHEPPACH. The National Governors' Association staff has worked with the insurance commissioners and others in formulating the National Governors' Association position on S. 372. In addition, I believe that there have been conversations between the insurance commissioners within States and the individual Governors. The commissioners' views are one of many inputs that the Governors review.

Senator EXON. So you can not say for the record, then, how much input there has been to the Governors of the States from their insurance directors?

Mr. SCHEPPACH. There has been input, but the decision was made by the executive committee of the Governors directly with us at the association.

Senator EXON. Do you know whether or not, when that committee made that decision, did they cite the recommendations from any of the insurance directors of the States in this regard?

Mr. SCHEPPACH. They did not.

Senator EXON. No further questions, Mr. Chairman. Thank you very much.

Mr. SCHEPPACH. Thank you.

The CHAIRMAN. Let us come back to this bill again, because you said if push came to shove and you had to take a position on this

bill as written, you might have to come down against it. But that is because of costs, correct?

Mr. SCHEPPACH. That is right, Mr. Chairman. Our executive committee is going to be discussing this issue a little bit more Monday and I would rather really get back to you on that, that final statement. But our basic problem is one of cost.

The CHAIRMAN. The reason I ask you that is this. The auto insurance companies are opposed to it and it is not going to cost them anything. They write their policies on a 6-month to 1-year basis and if we change the law so that they cannot classify on the basis of sex they will change their policies on that basis, and they are not faced with the same problem that life insurance companies are that have got policies in force that may run for years and years, and they have been based on a different basis of selling.

They are opposed to it philosophically, not financially. You are not opposed to this bill philosophically. In fact, most States have gone to a unisex pension system. They support the philosophy of the bill, no sex discrimination. Their concern is the retroactive cost that may be imposed upon them.

Mr. SCHEPPACH. Yes, Mr. Chairman. I think the recent State action speaks for itself; 37 States of the 50 have already moved, 2 are moving this coming July, and 2 or 3 other ones have it under consideration. So I think their actions speak for their support of the legislation.

The CHAIRMAN. The reason I specified that very clearly is, seeing the tactics that we are going to be involved in, I do not want anyone waving about the position of the National Governors' Association and saying they oppose this bill and giving the impression that they oppose it because of the elimination of sex discrimination.

Senator EXON. Let us clarify that point a little more for the record. Are you saying, then, Mr. Scheppach, that the Governors' only concern—which I think is a position that so far you have stated, and I am not sure that is right—the only concern of the Governors about this measure is the unfavorable financial impact it would have on the State finances?

The Governors were not concerned and did not address the difficulties that this could cause, especially with the retroactive feature in the bill? Did they discuss that or did they just refuse to address it or did not choose to?

Mr. SCHEPPACH. It has been discussed. I think the retroactive provision, again, is primarily a cost consideration.

The other thing that they are concerned about, of course, is the preemption, since the business of insurance has traditionally been an area that has been under State regulation. There is a general trend toward Federal preemption, and they are concerned about that.

But I would argue that 90 percent of their concern really is with respect to the cost. States are in a difficult fiscal condition. They have raised taxes substantially in the last couple of years, and this was a bill that would have a minimum additional cost of \$10 billion. That is their major concern.

Senator EXON. I can understand, as a former Governor, that would be their major concern and a very justifiable one. But are

you saying that they did or did not look beyond the matter of the cost to the State treasury that this bill might envision?

Mr. SCHEPPACH. They have looked at the other issues.

Senator EXON. You are saying, then, that they do not think the other issues are an important consideration for the Governors, or are you saying the other issues are not an important consideration for the National Government in passing legislation?

Mr. SCHEPPACH. Well, they are less important for the Governors.

Senator EXON. Or they probably are not primarily concerned about it because they do not think it is essentially their responsibility; would that be a fair appraisal? I am not trying to put words in your mouth, but I am trying to get some clarification of this issue.

What I sense is that you are saying that the Governors are most concerned about the impact that this legislation would have possibly on already seriously depressed situations as far as revenue and increased taxes are concerned, which most of the States are experiencing at this time. And I think that would be a legitimate concern of the Governors.

But probably they did not look into other possible shortcomings of the legislation?

Mr. SCHEPPACH. The other shortcomings of the legislation are the preemption of items that have been traditionally under State regulation. Governors are concerned about that.

They are concerned that some small insurance companies may in fact go out of business in their individual States; and they are concerned that some types of coverage might in fact have been dropped.

Senator EXON. So would you say that—you are not saying that the Governors would object to any changes in the legislation other than what is their major concern, but at least they focused on—and I can understand that—they focused on the effect that this might have on their State budgets? That was the overriding consideration?

Mr. SCHEPPACH. That is right. They are, however, aware of the other problems.

Senator EXON. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Tribble.

Senator TRIBBLE. I have no questions, Mr. Chairman.

The CHAIRMAN. Well, let me follow up one step further, so we are clear that neither one of us are putting words in your mouth. If actions speak louder than words, the 37 States that have gone to unisex tables are saying in essence, we support the philosophy of the bill, which is you should not discriminate on the basis of sex. We have some misgivings about a retroactive application of it, but we are all going to it prospectively, 37 have gone to it prospectively, and we think that it is no longer fair on the basis of insurance or whatever that we supply as States to discriminate on the basis of sex.

Mr. SCHEPPACH. That is right. I would have to add that in so doing that, Mr. Chairman, almost all of those States did that by some type of averaging. They did not do it through topping up.

The CHAIRMAN. I understand that.

Mr. SCHEPPACH. But that is part of the history.

The CHAIRMAN. And to the extent that—and I asked you this earlier, but to the extent we were to exempt completed contracts and that the bill allowed blending of rates and benefits of some kind, so that you had no additional expense, you think the National Governors' Association could support the bill?

Mr. SCHEPPACH. Yes, I do, Mr. Chairman.

The CHAIRMAN. Thank you.

I have no other questions. Jim?

Senator EXON. Let me just say that, from what the chairman has just said, it might well be that we are reaching or focusing in the direction of some kind of a compromise that can be worked out to improve the bill, as improved I think it must be.

I for one—and I think I speak for all of us on this side of the table, that we agree wholeheartedly with the concept of the bill. But when we pass legislation here we have to go beyond the worthy concepts and go into the heart of what the legislation would or would not do with regard to all of the individuals, all of the States, indeed, of the Nation.

I have no further questions.

The CHAIRMAN. Well, I might say—and this is not addressed to you—that principle that I just stated was a principle on a compromise that we had reached last week prior to the meeting of the American Council of Life Insurance, with all of the groups that are the proponents of this bill and some of the major life insurance companies. And then that fell apart the following day when the American Council of Life Insurance met, but we had reached that compromise with some portion of the industry and all of the proponents of the bill.

Thank you very much. We appreciate your coming and giving us the Governors' position.

Mr. SCHEPPACH. Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF RAYMOND C. SCHEPPACH, EXECUTIVE DIRECTOR, NATIONAL GOVERNORS' ASSOCIATION

Mr. Chairman and Members of the Committee: I am pleased to be here today to present the views of the National Governors' Association on S. 372, the Fair Insurance Practices Act.

Most states have moved to adopt gender-neutral policies in their own pension plans, and more are considering such steps. In line with this state action, the Governors support the intent of S. 372 to end the use of sex-distinct tables in the pension and insurance area. In combining the themes of equal treatment and fair pension practices, the legislation addresses some of the most important issues of modern life. Both themes are incorporated in existing NGA policy, which supports the principles of equal rights for women and continued improvement in public pension plans.

However, we understand that the cost of compliance with the provisions of the pending legislation to state and local pension plans could be in the billions of dollars. Further, we are informed that the effect—not the intent—of the legislation could be to preempt state regulation of insurance practices. Therefore, we would like the opportunity to work with you to modify some of the provisions of this proposed legislation.

In my statement today, I plan to focus on the following issues:

A history of state actions regarding conversion to gender-neutral tables;

A discussion of the data we have collected on the cost of compliance with the provisions of S. 372;

An overview of the fiscal condition of the states;

A summary of other concerns relating to the proposed legislation; and

The National Governors' Association's recommendations for changes in the Committee bill.

History of State action

The record of actions by state governments demonstrates both their genuine concern on this issue and their movement toward the use of gender-neutral factors to determine retirement benefits. Information collected by the National Association of State Budget Officers (NASBO) shows that states have been leaders in the timely and responsible adoption of gender-neutral factors. Of the fifty states, thirty-seven (or seventy-four percent) are already using gender-neutral tables. Three states, Arkansas, Delaware, and Wisconsin, have used gender-neutral tables since the inception of their retirement systems. In another ten states, use predates the Manhart decision. The remaining gender-neutral systems converted after 1978.

Among the 37 states that have adopted gender-neutral tables, the clear trend was to use a weighted average to determine the factors and then to apply them prospectively to new retirees. Of these, only three topped up for all options and one more topped up on a limited basis. ("Topping up" is unisex treatment based on the tables previously applied to the favored sex.) The remaining states used averages or weighted averages to determine their unisex factors. In terms of application, one state made limited retroactive payments and two states made some adjustments in future payments. The 34 others applied the gender-neutral tables prospectively only.

Even among the 13 responding states that do not use gender-neutral factors, the trend to such usage is still clear. Two states will adopt gender-neutral factors on July 1, 1983, and, at the time of the survey, two more states were considering legislation to implement such factors.

These data demonstrate that as a group state retirement systems are already well on their way to a full, good-faith resolution on this issue. Over eighty percent have adopted or are considering gender-neutral tables. They have tailored their adoption process to the unique financial, social, and legal framework that must be considered in each state capitol. The state actions demonstrate, I believe, that the basis of the sex-differential tables was a technical issue—generally accepted actuarial standards—not willful discrimination. As the discrepancies created by the application of the distinct tables were highlighted by congressional action and court cases, states have been reassessing these assumptions and changing their practices. As I have noted, additional states are moving toward the unisex concept.

The cost factor

As the Committee continues its work on this legislation, it is critical that you recognize the large potential costs that attaining the goals of S. 372 will mean for public retirement systems, the myriad considerations that underlie their fiscal solvency, and the long time periods over which fiscal consequences are felt.

State and local pension plans represent a major source of future retirement income for some eleven million state and local workers. They provide benefits to nearly two and a half million households, with more than \$14 billion paid in benefits in 1981. The current assets of these funds are now approaching \$250 billion.

Pension contributions account for a major portion of state and local budgets. These contributions rose from \$5.8 billion in 1972 to \$20 billion in 1981, an increase of 15 percent a year. Pension contributions make up about 11 percent of personal service costs of the state and local sector and represent a sizable future financial commitment by taxpayers. In one medium-size state, Washington, for example, the estimated total benefits expected to be paid to current members of the state employees' retirement system (both active and retired) is \$31.8 billion, assuming that no cost-of-living adjustments or benefit increases are enacted.

Accordingly, making changes in pension benefits can have enormous fiscal consequences. I would like to discuss with you the analysis that several states have made on the cost implications of S. 372 for their pension systems. I am submitting for the record the full text of the materials I am quoting in order to foster a full discussion of the potential costs involved. The states we will be covering are Oregon, Florida, and Michigan.

Oregon: In a letter sent to you, Mr. Chairman, and to Senator Hatfield, the director of the Oregon Public Employees Retirement System writes, "The Oregon Public Employees Retirement System with 137,000 active and 40,000 retired members converted to unisex benefit tables in 1978. However, no retirement benefit has ever been made legislatively retroactive and so recalculation was never considered.

To now use the unisex factors, retroactively, where for the opposite sex it would result in a higher benefit, would increase our unfunded liability \$33-\$40 million, re-

quiring an additional 0.10 percent to 0.15 percent increase in our present employer rates; currently at 12.17 percent of payroll."

Florida: The state actuary has estimated that it would cost approximately \$112 million to top up in compliance with S. 372 for current retirees. The state has not calculated the cost of compliance for future retirees, but the Florida budget office notes that the payroll for active workers is \$5.5 billion and projects a likely significant fiscal impact for the state.

Michigan: The Michigan actuary computed the cost implication of S. 372 for the state based on four alternate sets of assumptions about the requirements of S. 372. Under the fourth alternative, which we believe is closest to the provisions of the current bill, the present value of prospective benefits due to future and past retirants would be \$1.5 billion. The amount the state would have to contribute to the public retirement system to keep it actuarially sound in the first year of S. 372 applicability would be \$30 million.

The costs computed for each of the three states listed above are sizable. However, several actuaries mentioned in their analysis that the figures they provide are ballpark estimates, and they indicated that further refinement would be a complicated task. If this is true of the individual state projections, then nationwide fiscal impact statements are unreliable indeed. Differing assumptions used by the state actuaries compound the problem of obtaining an accurate figure for the total cost that S. 372 would impose on state and local pension plans.

There has been a great deal of confusion regarding the cost implications of S. 372, and suggestions have been made that the cost of compliance has been overstated. We therefore felt that it would not be desirable to provide this Committee with a new national cost estimate. Suffice to say that our own estimates suggest that the cost to state governments range from \$10 billion up to several times that figure. Even if our cost estimates are off significantly, the bottom line remains the same: the potential costs of compliance are very high.

We reached this conclusion by comparing the payroll of a sample of states that submitted cost estimates for implementing the legislation to the total payroll of state and local governments and then extrapolating from that ratio what the nationwide effect of the estimated compliance cost would be.

As the Michigan letter shows, if there are no requirements in the bill affecting past retirants, but topping up is mandated just for persons retiring in the future, the cost impacts are reduced only marginally. Thus, both the topping up and the retroactive requirements are costly, with the bulk of the costs resulting from the topping up provisions.

My understanding is that the Congressional Budget Office is working now on a fiscal note for the bill and should shortly provide a independent estimate of its potential cost on state and local government. In addition, NGA is still receiving information from states, and we would be happy to share it with you if you wish.

State fiscal condition

Any new state cost burden must be examined in the context of the overall fiscal conditions of the states. In 1982 and early 1983, the states' fiscal condition was the worst it has been in recent memory. The days of unused reserve fiscal capacity at the state level are gone and are not likely to return soon. Information collected by NASBO, NGA, and the National Conference of State Legislatures in December and January indicated that 31 states were faced with the prospect of concluding their 1982-1983 fiscal year with a balance of one percent or less of their annual general fund expenditures. Nineteen of these states were then projecting actual deficits if they did not take immediate expenditure and/or revenue actions. The situation is even more serious when it is noted that at that time, 35 states had already reduced expenditures below the level that had been initially planned for the 1982-83 fiscal year.

Preliminary data just collected by NASBO for 1983-1984 confirms this trend. Overall state balances, which were none too strong at the beginning of the fiscal year, will be reduced by more than two-thirds. The aggregate balance will probably be less than 1.5 percent of general fund expenditures (compared to 9 percent in 1980, 5.6 percent in 1981 and 4.3 percent in 1982.) When the strong balances of only two energy producing states (Alaska and Texas) are disregarded, the aggregate balance becomes negative. At least six states are still facing deficits. These states have been backed to the fiscal wall, and some have taken extraordinary measures so that they can carry over their deficit into the next fiscal year. This is not a permanent solution, and political tradition and legal requirements at the state level will not permit the accumulation of continuing state deficit.

The most important cause of these state fiscal problems is the recession. On the revenue side, a recession reduces sales, income, and other tax receipts below their expected level. With respect to expenditures, a serious recession increases the demand for social services and income support programs. While nationally the economy is just beginning to show some signs of an upturn, the states are only guardedly optimistic. They currently project revenue growth of less than 7 percent between fiscal year 1982-1983 and fiscal year 1983-1984. This may be somewhat conservative, but very clearly we are not back to the big growth years of the late 1960's and early 1970's. We do not have, and do not project having, reserve fiscal capacity in the near future.

As for the long range outlook, the states face the same political climate that you face. The public wants to keep its overall tax burden down, even if the consequence is reduced services. We, as you, have been forced to further increase some tax rates just to keep current programs in place. Twenty-one states increased taxes during 1982. In that year, 7 states raised their personal income taxes, 4 raised their sales taxes, 4 increased their corporate income taxes, and 9 raised their motor fuel taxes. For 1983, 34 Governors have recommended some type of tax increase. So far, through April 1, 5 states have raised their personal income taxes, 2 states have raised their corporate income taxes, 6 states have raised their sales taxes (one more has put in place an increase on a contingency basis), 8 states have raised their motor fuel taxes, and 3 states have raised their cigarette taxes. Many of the tax increases enacted by states have been large. Using examples from 1983, Ohio's income tax rate was permanently raised 90 percent beginning March 1, Michigan's income tax rate was increased 38 percent retroactive to January 1983, and the sales tax rates in Iowa and North Dakota were permanently raised from 3 to 4 percent.

Mr. Chairman, if S. 372 were enacted as written, it would compete in state budgets for very scarce funds that are also needed for education, income security, medical assistance, prisons, and mental health facilities. The costs the bill imposes create a serious problem, particularly in light of the very tight fiscal constraints within which states are now operating.

Other concerns of State officials regarding S. 372

In addition to the question of the costs that S. 372 would impose on state and local pension plans, there are a number of other issues that have been identified by state officials that I wish to mention briefly to you today. These are as follows:

Access to and Cost of Private Insurance: Some experts believe that the provisions of S. 372 could lead to the unavailability of some types of coverage, especially to private individuals, because costs would escalate or because some kinds of policies simply would be discontinued.

Solvency of Insurance Companies: S. 372 will mandate increased pension and annuity benefits under some insurance contracts. This topping up of benefits will require some life insurers to draw on surpluses, which may affect the financial solvency of the smaller companies. As the responsibility for monitoring the financial integrity of the insurance industry belongs to the states, state insurance regulators are concerned about these fiscal consequences of S. 372.

Effective Date: From the point of view of state pension systems and insurance regulation activities, an effective date for the bill of 90 days after enactment is simply unworkable. State legislatures will have to meet to approve pension plan changes in many cases, and state review of insurance policy revisions will be time-consuming.

Exhaustion of Remedies: The bill as presently drafted unnecessarily limits the ability of states to administer state insurance regulation. Under the statute, the complainant may arbitrarily stop state proceedings at the end of sixty days. This not only unfairly causes the states to expend administrative resources on a case which will be removed from their jurisdiction prior to its completion, but it also unnecessarily burdens the federal courts with disputes that could easily be solved at the state level.

Conclusion

Mr. Chairman, the National Governor's Association supports the intent of S. 372 to end discrimination in insurance and pension practices and move toward gender-neutral benefit levels. Most states have already eliminated sex distinct table in their pension plans. However, Congress should be aware that implementation of the bill as presently written would be very costly to state and local governments. Our current estimate places the cost in a range between \$10 billion and many times that amount.

The most significant provision from a fiscal standpoint is the "topping up" requirement. Therefore, we strongly believe that states should have discretion in

choosing the method of achieving equalization in pension benefits and premiums. Furthermore, we urge that the retroactive provisions of the proposed legislation be modified to assist in limiting the potential costs to public pension plans. States should be allowed discretion regarding any retroactive application of the legislation. Finally, we believe that the effective date of the legislation should be no less than eighteen months from enactment in order to permit adequate time for states to revise their practices if necessary and that state authority to regulate the business of insurance should not be preempted.

Mr. Chairman, we respect your efforts to enhance the fairness of the pension and insurance systems on which citizens rely for their future security. We offer to work with you to assure that enactment of S. 372 creates lasting and workable improvements in the insurance and retirement benefits provided to the public.

Attachments.

STATES ADOPTING UNISEX TABLES

Alaska, 1981 (January); Arizona, 1976; Arkansas, 1957; California, 1982 (July); Colorado, 1980 (January); Connecticut, 1982 (October); Delaware, since inception of plan; Hawaii, 1982 (July); Idaho, 1979 (January); Illinois, 1961 (September); Indiana, 1980 (c.a.); Iowa, 1979 (November); Kansas, date unknown; Louisiana, 1970; Maine, 1960's (late); Maryland, 1981 (January); Michigan, 1982; Minnesota, 1977; Mississippi, 1980 (July); Missouri, 1972/1977; Montana, 1979; Nevada, 1982 (June); and New Hampshire, 1982.

New Jersey, 1979 (July); North Carolina, 1981; North Dakota, 1977; Ohio, 1983 (April); Oregon, 1978; South Carolina, 1982 (January); South Dakota, 1974 (July); Tennessee, 1982 (July); Texas, 1975 (September); Utah, 1982 (January); Vermont, 1981/1982; Washington, 1982/1983; Wisconsin, since inception; and Wyoming, 1981 (July).

OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM, *Portland, Oreg., March 24, 1983.*

Hon. BOB PACKWOOD,
*Senate Office Building,
Washington, D.C.*

DEAR SENATOR PACKWOOD: We wish you to be aware that S. 372/H.R. 100 requiring that unisex actuarial retirement factors be utilized, and recalculation made where sex-distinct factors were formerly used, will lay a heavy financial burden on the over 792 participating employers in the state of Oregon's public retirement trust.

The Oregon Public Employees Retirement System with 137,000 active and 40,000 retired members converted to unisex benefit tables in 1978. However, no retirement benefit has ever been made legislatively retroactive and so recalculation was never considered.

To now use the unisex factors, retroactively, where for the opposite sex it would result in a higher benefit, would increase our unfunded liability \$33-\$40 million, requiring an additional 0.10 percent to 0.15 percent increase in our present employer rates; currently at 12.17 percent of payroll.

Our actuary, Milliman and Robertson, Inc., in a letter of evaluation, dated March 9, 1982, says:

"The System now uses 'unisex' factors in computing all benefits for new retirees. However, the bill would require increases in two types of benefits payable to members who retired before the 'unisex' factors were adopted. For women in that group, the portion of the benefit purchased by member contributions would be raised to the level provided by the male annuity purchase rates, about a 12 percent increase, on the average. Men who retired under options 2 and 3 would have their benefits raised to the level provided by the female conversion factors. On the average, affected option 2 benefits would increase by about 22 percent; option 3 benefits by about 11 percent."

Based on the December 31, 1979, actuarial valuation, we estimated the recomputations would trigger an \$8-\$10 million increase in the actuarial present value of benefits for female retirees and a \$25-\$30 million increase in the actuarial present value of benefits for male retirees and their survivors. Assuming all those survivors are female, the total increase in actuarial present value of benefits can be analyzed by sex of recipient, as follows:

	Men	Women	Total
Retired women.....		\$8-\$10	\$8-\$10
Retired men and their beneficiaries	\$18-\$20	7-10	25-30
Total.....	18-20	15-20	33-40

All of the recomputations would require a substantial effort by your (PERS) staff. We have not attempted to estimate the administrative cost involved, but we are confident it would be significant.

We estimate conservatively with our present limited data capabilities that under our final average salary—full formula—defined benefit plan there exists at least 4½ person years of reviewing and recalculating to meet the retroactive requirements.

We seek your support, first, in eliminating the retro-feature inasmuch as Oregon Courts have consistently upheld the contractual theory of employment—in considering fringe benefits. Secondly, at least, if nothing else can stay recalculation, then as much later a date of accomplishment than, 90 days after becoming effective, must be considered or chaos will result for us.

In these times of economic difficulty, to now saddle Oregon's trust with such a substantial burden when in truth it creates new, unforeseen contractual rights and benefits the females clearly less than the males, seem incongruous, illogical and almost unconscionable.

The billions of dollars that would be here utilized (contrary to agreed contractual terms) would seem to be much better used in almost any more appropriate area of general benefit increases.

As it would affect our membership, employers and employees, this legislation could almost be entitled the "Unfair Insurance Practice Act" or maybe even better, the "Discrimination in Insurance Act."

Sincerely,

JAMES L. MCGOFFIN, *Director.*

GABRIEL ROEDER, SMITH & Co.,
Detroit, Mich., March 25, 1983.

Mr. RICHARD L. BEERS,
*Director, Bureau of Retirement Systems,
Lansing, Mich.*

DEAR DICK: We have prepared estimates of the cost, to Michigan public employee retirement plans, associated with the proposed Fair Insurance Practices Act (S372). The estimates are based upon information concerning public employee retirement plans in Michigan for which we prepare annual actuarial valuations. More than 90 percent of all public employees in Michigan are included in the membership of these plans. The information gathered has been projected to provide cost estimates based on all Michigan public employees.

The estimates include potential costs associated with early retirement provisions and selection of optional forms of benefits in defined benefit plans as well as lifetime benefits in defined contribution plans (money purchase plans). We have not addressed potential costs associated with automobile, life, health or disability insurance or deferred compensation programs for persons also covered by a retirement plan. We have not included any recognition of potential changes in patterns of retirement or selection of optional forms of benefit which might result from the passage of S372.

We have reviewed four possible versions of the final effect of S372. Other possibilities exist. Which circumstances will prevail is dependent upon the final interpretations of the law and upon the effect, if any, of the Michigan Constitution.

Alternative 1: Unisex tables are mandated only for persons retiring in the future. The unisex tables are to be based on average male-female experience.

Alternative 2: Unisex tables based on average male-female experience are mandated for persons retiring in the future. Benefits of past retirants must be recomputed (for future payments only) to be at least as large as they would have been if unisex tables (based on average male-female experience) had been in use at the time of retirement. Benefits to past retirants of the sex-favored group would not be reduced.

Alternative 3: Unisex tables are mandated only for persons retiring in future. The unisex tables must be based on the sex-favored tables ("topping up").

Alternative 4: Unisex tables based on the sex-favored tables ("topping up") are mandated for persons retiring in the future. Benefits for past retirants must be re-computed (for future payments only) based in the sex-favored tables in use at the time of retirement.

A summary of estimated data concerning Michigan public employee retirement plans is shown below:

Number of active employees.....	475,000
Annual active member payroll	\$7,000,000,000
Number of benefit recipients.....	115,000
Annual retirement benefits now being paid.....	\$550,000,000
Present value of these benefits	\$4,500,000,000

The estimated costs associated with Alternatives 1-4 are shown below. The costs are shown both as lump sum amounts (present value of potential additional benefits) and first year increased contribution requirements. The latter should be viewed as lower limits since they reflect interest-only financing of additional actuarial accrued liabilities. As an item of general interest, we have also shown the potential additional first year benefit payout for past retirants.

(Dollars in millions)

	Alternative 1	Alternative 2	Alternative 3	Alternative 4
Potential additional first year benefit payout to past retirants.....	0	\$3	0	\$15
Present value of potential additional benefits:				
Future retirants.....	0	0	\$1,400	\$1,400
Past retirants.....	0	\$25	0	\$130
Potential additional first year contribution requirement:				
Dollar	0	\$5	\$28	\$30
Percent of active employee payroll	0	0.007	0.40	0.43

There are significant costs involved in increasing the benefits of past retirants. The really large costs, however, are in the "topping up" for future retirements.

Keep in mind that these are ballpark estimates. Further refinement would be a large project.

Sincerely,

ALAN E. SONNANSTINE.

STATE OF FLORIDA,
OFFICE OF THE GOVERNOR,
Tallahassee, Fla., April 8, 1983.

MR. GERALD H. MILLER,
Executive Director, National Association of State Budget Officers,
Hall of the States, Washington, D.C.

DEAR MR. MILLER: Thank you for giving us the opportunity to comment on the impact of the Fair Insurance Practices Bill on Florida's public employee retirement system. I have enclosed a copy of a fiscal note prepared by the State's actuary. It is my understanding that this information was furnished to the National Association of State Retirement Administrators by telephone on April 8.

Please note that the increased liability of \$111,761,507 is for current retirees only. We do not know what the increased liability for future retirees would be. Since our current payroll for active members is around \$5.5 billion, the total cost of implementing a "topping off" approach to unisex actuarial tables could be quite significant.

The most disturbing aspect of this bill is that it does not merely attempt to eliminate gender specific factors in benefit programs but that it attempts to dictate benefit levels by requiring the higher amounts. In fact, the federal government would be committing state and local governments to increased expenditure of public funds. A more rational approach for a federal policy is to allow the elimination of gender factors prospectively and at whatever benefit levels deemed appropriate by the employers.

Please let me know if you would like further information or comments.
Sincerely,

JOHN T. HERNDON,
Director, Office of Planning and Budgeting.

Enclosure.

[Memorandum]

To: Mr. A. J. McMullian III—State Retirement Director.
From: L. J. Gibney—State Retirement Actuary.
Subject: Fair Insurance Practices Bill (HR-100/S-2204).

The Major fiscal impact of the bill is brought about by requiring the male benefit to be increased to the level of the corresponding female benefit. In other words, the option reduction factor used for the determination of the male benefit would be replaced with the female factor. There would not be any retroactivity involved and, consequently, all male members currently on the retired payroll would receive an immediate increase. The female reduction factors would be used in the future for both sexes.

To estimate the increase in our liability as well as the increase in the current benefits payable we used the data from our March 1983 payroll. The following indicates the number of records involved.

	Number of males	Current monthly benefit
Life with certain period.....	7,231	\$2,998,675
100 percent survivorship	7,873	2,865,591
66% percent or 50 percent survivorship.....	3,242	1,679,854
Total.....	18,346	7,544,120

The procedure for estimating change was carried out in the aggregate by obtaining by option and within each option by Florida Retirement Systems retirees and Existing System retirees, the current benefit, increase in benefit and increase in liability. The following summarizes the effect of the change.

	Increase in liabilities of FRS	Increase in monthly benefits to current male retirees
Life with certain period.....	\$19,798,553	\$278,897
100 percent survivorship	65,356,142	535,958
66% percent or 50 percent survivorship.....	27,019,297	260,242
Total.....	111,761,507	1,075,097

The CHAIRMAN. Now let us take a panel of Mr. Robert Houser, accompanied by John Filer, Mr. Ira Glasser, accompanied by Mary Heen, Dr. Mary Gray, Ms. Marsha Greenberger, and Mr. Jerome Bolin.

We do not have a microphone for each witness, so I might ask the witnesses to pass the microphones back and forth. They are very, very directional, so speak right into them so the people in the back of the room can hear you, and we will start with Mr. Houser and Mr. Filer.

Excuse me, Dick. I did not see you there to introduce the group, former Senator, former Secretary of Health and Human Services Schweiker, who I referred to earlier. I congratulate him on the job

that he has done with the American Council of Life Insurance, and Dick, I hope you are finding it a very satisfactory private and enjoyable life.

STATEMENTS OF HON. RICHARD SCHWEIKER AND ROBERT HOUSER, CHIEF EXECUTIVE OFFICER, BANKERS LIFE OF IOWA, REPRESENTING AMERICAN COUNCIL OF LIFE INSURANCE, ACCOMPANIED BY JOHN FILER, CHAIRMAN, AETNA LIFE AND CASUALTY; IRA GLASSER, EXECUTIVE DIRECTOR, AMERICAN CIVIL LIBERTIES UNION, ACCOMPANIED BY MARY L. HEEN, STAFF COUNSEL, WOMEN'S RIGHTS PROJECT; DR. MARY GRAY, CONSULTANT, COALITION IN SUPPORT OF S. 372, AND PROFESSOR OF MATHEMATICS AND STATISTICS, THE AMERICAN UNIVERSITY; MARSHA GREENBERGER, MANAGING ATTORNEY, NATIONAL WOMEN'S LAW CENTER; AND JEROME E. BOLIN, PRESIDENT, ABRAHAM LINCOLN INSURANCE CO., REPRESENTING NATIONAL ASSOCIATION OF LIFE COMPANIES, ACCOMPANIED BY ROY WOODALL, EXECUTIVE VICE PRESIDENT, NALC

Senator SCHWEIKER. Thank you very much, Mr. Chairman.

I am delighted to be here to see my friends, Chairman Packwood and Senator Tribble. I am very pleased on behalf of the American Council of Life Insurance to present today two of our illustrious members, Mr. John H. Filer, chairman of Aetna Life Insurance Co., and Mr. Robert N. Houser, chairman of Bankers Life Co.

Mr. FILER. Mr. Chairman, I am John Filer, chairman of Aetna Life & Casualty. Let me begin by asserting a view that I have held very firmly and for a very long time, and that is that among the most urgent items on our national agenda must continue to be the creation and maintenance of an open, unbiased, free society. Our continued failure to reach that goal, in my judgment, is one of the more serious impediments to true progress and success for all of us, business as well as individuals.

I do support the motivation that sponsors this bill, and believe that the inquiry and the debate about its provisions are a very good thing. However, I also believe that passage of the bill in its present form would be a serious and costly mistake.

Gender based rating in life insurance contracts properly used as one factor in classifying risk does produce a more accurate and hence a more fair and equitable price. Of course, there is no way to assure completely accurate life insurance pricing for any one person or contract, but for each person or contract, the likelihood that the price will be accurate is enhanced by gender classification, and this is a fact.

It is also a socially desirable result to price as consistently with cost as you can so that no individual is unnecessarily overcharged for a product or a service. How to apply this principle consistent with notions of fairness and equality is the issue. I suggest that the matter becomes simpler if we deal with two sets of circumstances separately as they are in fact quite different, the employer-employee relationship on the one hand and the individually purchased contract on the other.

In the situation of an employment relationship, it can be argued persuasively that the employer should provide a benefit indistinguishable in its result for all employees regardless of gender. It will cost more or less to provide a particular insurance or pension benefit to men and women, but it is seen as inequitable to have any one benefit last longer, pay less, or cover less for one sex or the other.

As a condition of employment, equality of result can well be expected, and the American Council of Life Insurance fully supports the prospective application of such a concept.

With respect to individual contracts undertaken outside of the employer-employee relationship, the situation is quite different. Gender based pricing is essential in life insurance to avoid unfair discrimination. There is no third entity, the employer, to even out the cost from inaccurate pricing. Prohibition of gender-based pricing in life insurance may appear to some to be consistent with civil rights notions of fairness and equality. The trouble with it is that it produces an unfair, inequitable result. In effect, it forces an unfair discrimination against members of one sex or the other, and in life insurance the unfairness will be directed against the female population.

That is the end of my statement, Mr. Chairman.

Mr. HOUSER. I am Bob Houser, Bankers Life Co., Des Moines, Iowa.

There are a number of features of S. 372 which we find objectionable and which in our opinion should be changed. Having said that, by far the most serious of these is the retroactive feature combined with the topping up requirements of the bill. The primary impact of this feature would be on individual life insurance policies where women have long enjoyed a price discount. The bill would require equalization of future premiums and benefits for all existing contracts.

Under the topping up requirements of the bill, as we understand it, the only practical way to do this would be by raising the male benefits. The total cost to our industry, the life insurance industry, would be staggering. For some 153 companies with 80 percent of the industry's assets, the cost would be something like \$14.5 billion. This is more than 50 percent of the industry's entire net worth, and even further, for 24 companies, and they are not all small companies, it would exceed 100 percent of their net worth. Under State law, they would be insolvent.

Unfortunately, Bankers Life is one of these 24 companies that could be wiped out by this bill. We are not a small company. We are 104 years old. We are the 10th largest life insurance company in the United States by premium income. The bill would increase our liabilities by \$345 million. Unfortunately, our total net worth is only \$311 million. State insurance regulators would have no recourse except to declare us insolvent should this become law.

Obviously, such a financial disaster would produce heavy litigation. This would be tied up in the courts for years. There are very serious doubts as to the constitutionality of this feature of the bill, and as part of our prepared testimony there is a legal opinion prepared by a highly esteemed constitutional lawyer discussing this particular point. We are prepared to work with you and your committee in preparing responsible legislation in this area which

would not seriously damage our industry, and through damaging us, damaging our policyholders.

Thank you.

[The statement follows:]

STATEMENT OF ROBERT N. HOUSER, CHAIRMAN OF THE BOARD, BANKERS LIFE CO., AND JOHN H. FILER, CHAIRMAN, AETNA LIFE INSURANCE CO.

Mr. Chairman, I am Robert N. Houser, Chairman of the Board of Bankers Life Company of Des Moines, Iowa, With me is John H. Filer, Chairman of the Aetna Life Insurance Company of Hartford, Connecticut. We appear here today on behalf of the American Council of Life Insurance, a national trade association which represents 572 life insurance companies in the United States and Canada. The member companies of this organization account for more than 95 percent of the life insurance in force in the United States. In addition to our direct and immediate interest in life insurance practices in general, we also have a deep interest in the sound administration of pension plans. Our members write virtually all of the insured private pension plan business in the United States.

We thank you for this opportunity to testify on S. 372 which is of much concern to the life insurance business. We are troubled over the potential costs to our policyholders and to our companies that would be caused by the bill as currently drafted. We have further concerns about its impact on the manner in which life insurance companies will be able to develop, price and market their products in the future.

Our traditional risk classification systems were developed over the years in response to our need to set accurate prices for our products. Our policyholders have been well served by the ability of life insurance companies to do so. Throughout their history, life insurance companies have added new individual characteristics to their classification system as their relevance became clear and have discarded old ones that were no longer important. This process reflects an ongoing commitment to serve our customers better and to ensure that each person is charged a price appropriate to the risk—or cost of insurance—that he or she represents. Competition makes it vital for life insurance companies to charge prices that are fair to the customer in relation to the risk being insured.

Sex has been and continues to be one of the most relevant characteristics used by life insurance companies to develop premium rates that accurately reflect the expected costs of insuring people. The practice results in our charging men more for life insurance, our major product, than we do women. Men experience higher mortality rates than women do, all other factors being equal. The opposite result obtains for annuities. The use of the sex of the insured as one of the facts pertinent to setting premium rates enables to charge each individual prices that reflect the expected cost of insurance more accurately than the prices we could charge if we were obliged to ignore gender.

Risk classification and premium rates for life insurance

A life insurance company cannot offer policies to all purchasers at the same price. Instead, companies charge different premium rates to good and bad risks. The rate classes used by companies have to be narrow enough so that nobody is being significantly overcharged or undercharged. Under such an approach, individuals are put in a class where their characteristics are as close as possible to others in the same class. This practice allows life insurance companies to set a price for each individual that accurately reflects the risk he or she represents.

Competition reinforces the operation of the above principle. If one company finds that people with a certain characteristic are being overcharged, it can establish lower premium rates for persons with that characteristic. If the classification is valid, and if other companies do not follow suit, the company charging the lower premium rate will get the majority of such risks and other companies will end up losing their share of the market.

This type of thing happened recently with respect to cigarette smoking. A few companies, after studying the 1964 "Surgeon General's Report on Smoking and Health", decided to lower their premium rates for nonsmokers. That move was an experiment in a real sense, because there existed no mortality data dividing people between smokers and nonsmokers.

When the mortality experience on such a basis was developed and published by one large company, such a classification was shown to be valid and important. Within a year and a half many, or most, companies had separate life insurance premium rate scales for smokers and nonsmokers.

There was a period of time when most, if not all companies were charging the same life insurance premium rates for women and men. During that time the difference in mortality rates between women and men in the United States population was relatively small.

Changing circumstances following World War II led to a change in practice. First, the mortality difference by sex in the general population had become larger than before and was continuing to widen. Second, women were becoming an increasingly substantial potential market for life insurance. These two developments caused companies to establish separate rates for the two sexes, and most of them did so in the 1950's. The lower rates which have been charged for women since then have contributed to the impressive growth in life insurance purchases by women in the last two decades.

In other areas of risk classification, too, insurance companies are constantly reviewing and updating their classifications. For example, they must reflect changing patterns in the mortality associated with various physical impairments, which occur because of progress in medical treatment, public health measures, lifestyles, etc.

Since most companies began to charge different life insurance premium rates for women and men, they have been keeping track of their insureds' mortality experience for each sex separately. The data tabulated for about twenty large companies each year have shown a substantial difference by sex. (See Appendix I for a discussion of mortality differences by sex.)¹ Specifically, mortality rates for the women have been consistently about 60 percent of the men's in each of the last 15 years. That means that only about 60 percent as many women died each year as would have died if they had experienced the same mortality rates, age by age, as did men.

Among annuitants, the observed differences in mortality rates between men and women are also significant. The latest published experience of 15 large companies under single-premium immediate individual annuities has shown women's mortality equal to about 70 percent of the men's.

The mortality differences we have cited above are significant. Companies have reflected them in their premium rates; this gives consumers better buys than they would have received if the mortality differences were not reflected in premium rates. A change in the pricing structure of the sort mandated by this bill would adversely affect both life insurance companies and their policyholders.

Fairness in life insurance availability

Life insurance companies are anxious to sell women both insurance and annuity contracts. There is simply no problem in the availability of such coverages to women. To make sure that this condition prevailed, in 1975 the American Council of life Insurance supported the adoption by the NAIC of a model regulation prohibiting distinctions by sex in the availability of insurance (see Appendix II).

Nineteen states have promulgated regulations based on the NAIC model. To our knowledge life insurance companies are compiling with the requirements of the model in all states, including the states which have not yet promulgated a regulation on the subject.

We wish to point out that in light of the above, some of the remarks which were entered into the Congressional Record upon the introduction of S. 372 are based on outdated, obsolete information. There is no need for additional legislation on this matter.

Prohibitions regarding race, color, religion, and national origin

S. 372 would prohibit certain insurance practices based on race, color, religion, or national origin, as well as sex. Life insurance companies do not make any distinctions on any of those other listed bases. Accordingly, there is no need for legislation concerning them.

Adverse effects of S. 372

If S. 372 is adopted in its current form, it will lead to increased premiums (in some cases for men, in some cases for women) for policies issued in the future; it will generate a period of confusion for companies, agents and policyholders by requiring changes to existing policies; it will create costs that will be financially damaging to many life insurance companies; and some changes required in existing contracts will cause protracted litigation.

Life insurance premiums for women are currently lower than men's by something over 10 percent on the average. S. 372 would force the companies to adopt a single

¹ The appendices referred to in this statement have been retained in the committee files.

premium rate scale, which would be somewhere quite close to the present male level. Such an increase might cause some women to buy less insurance.

There would, perhaps, be some slight reduction in premium rates paid by men when everything had finally settled down. For women there would be the loss represented by the higher premiums paid by those who bought life insurance, and a different kind of loss represented by the lack of insurance coverage for those who chose not to buy life insurance or who bought less than they otherwise would have.

In the case of annuities there would be a similar effect, but in the opposite direction. There might be a slight gain for women. For the men there would be loss through higher premiums for those who bought and losses of annuity coverage for those who did not buy.

The overall effect would be reshuffling of premium dollars and a contraction of life insurance and annuity coverage. Such a result would damage the services which our member companies are providing to the public.

Impact of S. 372 on existing contracts

Thus far we have not discussed the applications of S. 372 to outstanding contracts which would have serious and far reaching repercussions.

Life insurance companies would be forced to equalize the premium rates and benefits of existing policies and contracts as of the effective date of the Act. The bill, as drafted, would require life insurance companies to provide additional insurance benefits for which no premiums have been paid. For example, typical \$10,000 whole life policies issued ten years ago might have an annual premium of \$190 for men aged 35 at issue and \$170 for women aged 35 at issue.

After 10 years, the policies provide that men can surrender their contracts for \$1,460 in cash. S. 372, as drafted, would require the premium rates to be made the same for men and women. The company could do this by increasing the coverage on men by about 12 percent. This would also increase the cash values on these contracts by about 12 percent. Under many policies the cash value per \$1,000 of insurance is lower for women—reflecting the lower premiums charged. For these policies, the company would also have to increase the cash values for women by about 12 percent. This increase in the women's cash values, in this case from \$1,300 to \$1,460, would further increase the company's liability. Under this approach, the annual premium paid by both men and women would remain the same, the male premium rates per thousand of insurance would go down about 12 percent, and the company's liability for these policies would, like the cash values for those policies, increase by 12 percent.

We recently sent a cost survey form to each of our 572 member companies for the purpose of obtaining their estimates of the impact of S. 372 on their net worth. A copy of this form is attached as Appendix III. As on May 17, 1983, we had tabulated responses from 153 member companies having about eighty percent of the assets of U.S. Life Insurance Companies. The total increase in liabilities that would result if S. 372 were to apply to existing policies and contracts of those companies would be \$14.5 billion. The total increase in liabilities that would be caused by S. 372 is about 51 percent of the aggregate net worth of the 153 reporting companies.

The effect of S. 372 on the net worth of any particular company will vary depending upon a number of factors, including the relative importance of each line of business and how recently the company adopted sex-distinct premium rates. Fifty-two companies would have reserve increases in excess of 50 percent of their net worth, which would severely curtail their viability as financial entities and affect the future costs of insurance protection charged to their policyholders, both men and women. Twenty-four companies would have reserve increases in excess of 100 percent of their net worth, which would make them insolvent under state insurance laws. Whether the policyholders of these companies would be able to continue their insurance protection would be problematical.

Employee benefit plans

Notwithstanding the very deep concerns of the life insurance industry which I have just articulated, we recognize the civil right considerations that have led to the introduction of this and similar bills. We support the fundamental civil rights principle that no person should be treated unfairly because of his or her race, sex, religion, or ethnic background. Over the past two decades efforts have been made by Congress in combatting many forms of discrimination that has been prevalent in our society. As concerned and responsible citizens, the American life insurance business endorses the objectives of those efforts and the resulting legislation.

We recognize that others in our society have perceived inequities in the treatment of men and women in the areas of insurance and/or employee benefit plans. For the

reasons we have explained above, we believe that Congress should not enact legislation prohibiting insurers from using gender as a risk classification factor. In the area of employee benefit plans, however, where most of the pension or welfare benefits are provided or purchased by an employer, we believe that it would not be unreasonable to require, with respect to benefits earned from future service, that employee benefits and employee contributions both be on a sex-neutral basis. Such a requirement must, however, be carefully designed in order to avoid an unduly heavy impact on some plans, which might compel their sponsors to eliminate one or more of the retirement options in their plans or, perhaps, terminate their plans.

If retirement plans were required to equalize benefits for men and women on the basis of "topping-up" the benefits for the less favored sex to the level of benefits for the more favored sex under each optional form of retirement, for all future benefits of retirement-plan participants who are either active or retired, the near-term additional cost (according to the most recent estimates) would be in the neighborhood of \$1 billion to \$2 billion per year. Most or all of that cost would be borne by plan sponsors, who might feel compelled to avoid that additional burden by modifying or terminating their plans. We suggest, accordingly, that the equalization be accomplished by an averaging, rather than a "topping-up" approach. In order to avoid reducing benefits which some plan participants have already accrued, we further suggest that any requirement for equalizing benefits apply only to benefits attributable to or arising from service performed (or contributions or considerations paid) on or after a specified date. Such a date should provide suitable lead time for implementation.

Such changes in the requirements applicable to employee benefit plans should not interfere with the current rate-setting practices of life insurance companies. The premium rates charged for contracts used to fund employee benefit plans reflect closely the claim costs generated by the employee group. This practice is necessary; employers can decide to make their employee benefit plans self-funded if the insurance companies are forced to use inappropriate premium rates. In any event, the requirement for equal benefits and equal contributions by employees to the cost of coverage would fully respond to civil rights concerns. There is no reason to try to change the costs to corporations of providing benefits to their employees.

In establishing the requirements we have suggested above, Congress would be extending civil rights policy to the area of pension and welfare benefits provided in conjunction with employment. Congress could extend civil rights policy to this area without imposing severe burdens on both public and private pension plans, if they limit the applications of the bill to future accruals.

Constitutionality of application to existing contracts

In our testimony on S. 2204 last year we pointed out that S. 2204 raised serious constitutional questions because of its application to existing policies and contracts of insurance. We recently retained outside counsel to research more thoroughly the constitutional implications of S. 372. Based on the language of the bill and its resulting impact, counsel is of the firm opinion that there is substantial doubt as to the constitutionality of the features of the bill that apply to existing contracts and obligations. Enactment of S. 372 in its present form would likely engender a large amount of litigation, and the threat of additional liability and the inevitable litigation will, without doubt, have adverse effects on the financial stability of insurance plans. The report of outside counsel, Erwin N. Griswold, of the firm Jones, Day, Reavis and Pogue, is attached as Appendix IV of our statement.

The opinion of counsel is based on the Constitution's Fifth Amendment proscriptions against deprivation of property without due process, and on the taking of private property for public use without just compensation. When the tests set forth in recent judicial decisions for determining the constitutionality of laws having effect on existing obligations are applied to S. 372, the bill's constitutionality is brought into serious doubt in that: (a) it would result in a severe impairment of contractual obligations; (b) there has been reliance by insurers on the right to classify risks on the basis of sex and substantial reliance by insurers and policyholders that the terms of the insurance contracts would be maintained; (c) the equities of the legislative burden would appear to weigh against application to existing contracts and obligations; and (d) as currently drafted, the bill contains few moderating features.

Enforcement provisions

S. 372 would give the primary responsibility to enforce its provisions to state or local authorities in those states or political subdivisions having a law prohibiting discriminatory action along the lines of the federal bill. However, the bill does not

identify a specific state or local enforcement mechanism to take action concerning alleged violations of the federal standard.

S. 372 directly addresses issues relating to insurance regulation. Insurance has been traditionally regulated by specific state regulatory agencies, i.e., state insurance departments, who monitor and enforce all of the state laws regulating insurance. However, S. 372 could easily be interpreted to give insurance regulatory authority to an agency other than a state insurance department, such as a state civil rights agency or even a county or city human rights commission. This could lead to a convoluted and overlapping system of enforcement. The authority to monitor and enforce laws relating to the regulation of insurance should continue to be left in the hands of the state insurance departments where such authority has traditionally been and where the experience to carry out such regulations resides. We, therefore, will urge that S. 372 be amended to make it clear that enforcement will be carried out by state insurance departments primarily.

Committee report on S. 2204 from 1982

Finally, Mr. Chairman, we note that when S. 372 was introduced this year, reference was made to S. 2204, a similar bill which was reported favorably by this Committee last year. Unfortunately, the Senate Commerce Committee Report on S. 2204 contained a number of incomplete and misleading statements. In order to complete the record, we have included as Appendix V of our statement a set of comments on that Report compiled by several insurance trade associations.

Mr. Chairman, we appreciate this opportunity to share our concerns with you. Should the Congress adopt legislation regarding sex classification in insurance, we believe that it will be in everyone's best interest to work together to develop a solution that is best for the life insurance business and for the policyholders we serve.

The CHAIRMAN. Thank you, Mr. Houser.

Mr. Glasser.

Mr. GLASSER. Thank you, Mr. Chairman.

My name is Ira Glasser, and I am the executive director of the American Civil Liberties Union. We testify here today in support of S. 372. Everyone seems to agree that it is now a fundamental principle of American public policy that no individual should be discriminated against on the basis of race or sex or religion.

What we do not agree on is where that principle should apply. Insurance has been one of the areas of American life which seems to remain immune from that principle. It is one of the areas of American life where that principle is still opposed, and where an exemption from that principle is still sought and defended.

We think that as a matter of principle, every actuarial argument that could be made for the continuation of sex-distinct insurance tables could also be made for the establishment of race-distinct tables, and for religion-distinct tables. Indeed, it used to be the case that race distinctions were made in insurance, and during those days they were defended by the insurance industry in precisely the same terms, using the same justifications as we hear today with respect to the defense of sex-distinct tables.

Insurance companies do not do that any more on the basis of race. Many States prohibit race-distinct insurance tables, and most insurance companies, indeed, all insurance companies of which I am aware, do not use race-distinct tables any longer. It is not because they cannot be actuarially justified. It is rather because we have come to believe that race-distinct insurance tables are wrong in principle and inconsistent with well established civil rights policy. I cannot imagine how anyone can continue to justify in principle continuing a system based on sex discrimination that they have agreed is unjustifiable on the basis of race discrimination.

I have not heard anyone yet offer a basis for maintaining discrimination in sex while agreeing that it should not be maintained with respect to race or religion. It is possible to say, for example, that Mormons have lower mortality rates than the population at large, that Jews at the age of 65 have higher mortality rates, that whites as a group get sick less often, and live longer, and suffer less disability than blacks as a group, but those actuarial facts have not been used as justifications to maintain those racial or religious distinctions in insurance rates or benefits, and there is no principled reason why we should abandon those distinctions with respect to race and religion and maintain them with respect to sex.

There is an issue of cost. That is the issue we should be discussing, and the issue is mostly not a question of prospective cost but a question of the transition from the old system to the new.

I would first like to point out what this bill does not do. This bill imposes no new obligations, financial or otherwise, on employers, either public or private. Title VII already prohibits discrimination by sex either in rates or in benefits, and title VII applies to both public and private employers. State governments and city governments are employers. To the extent that they are providing sex-distinct rates and sex-distinct benefits to their employees, they are already in violation of title VII. They are already accumulating liability.

•Lawsuits against them with respect to violations of title VII will produce the same kinds of financial obligations that they say they fear here. This legislation imposes no new obligations upon employers that title VII does not already impose, and that is a very large part of the cost considerations that we are hearing about.

Thus, with respect to the cost considerations, when you exclude employment-related insurance and employment-related pension plans from what we are talking about (because title VII already prohibits sex discrimination there) you are talking about a much smaller problem than we have been led to believe.

Second of all, even with respect to that problem, S. 372 permits insurance companies to modify premiums if necessary to comply with the act, and while it does not permit them to lower benefits of existing contracts, the authority to modify premiums ought to take care of a lot of the cost considerations.

Third, we are talking about a lot of insurance that is short term. Most health insurance today comes through employment and is therefore not a factor here. What we are talking about is a lot of insurance, like auto insurance, term life insurance, and so forth, which is short term and therefore the problem of current contracts is much less of a problem than we have been led to believe.

Finally, even with respect to private annuities, we are usually talking about plans where there are minimum guaranteed rates that are so low that there usually is a pool of money from real income to the plans that is large enough to provide the minimum guarantees while adjusting the overall benefits to a sex-neutral standard.

In conclusion, we do not believe there is any principled reason for rejecting classifications based upon race and religion, and therefore there should not be any based on sex. Nothing recommends these current sex-based distinctions except the inertia of tradition.

If there are problems to be solved relating to cost in order to effect the transition from a discriminatory system to a fair one, let us solve those problems, but let us not use those problems as an excuse to abandon principle.

[The statement follows:]

STATEMENT OF IRA GLASSER, EXECUTIVE DIRECTOR, AMERICAN CIVIL LIBERTIES UNION

The American Civil Liberties Union (ACLU)¹ strongly supports passage of the Fair Insurance Practices Act (S. 372), which would ban discrimination based on race, religion, national origin, or sex in the writing or selling of insurance. The pressing need for such legislation has been fully explored before this Committee and the House of Representatives Committee on Energy and Commerce in hearings held this year and in previous years. It is now time for the Senate to take action, and pass S. 372 as proposed.

The Committee has already been presented with extensive information regarding the way discrimination in insurance tends to disadvantage women. The ACLU opposes all sex discrimination in insurance: that which favors men as well as that which favors women. On balance, it has been our observation, however, that it is women who suffer most as a result of being grouped by sex.²

We will focus today instead on other aspects regarding the need for this legislation. First, based on our long involvement in the effort to eradicate discrimination in other areas of American life, including housing, education, and employment, we wish to emphasize the importance of S. 372 as an essential and long overdue part of our national civil rights policy.

Second, because of our extensive experience, through the work of our Women's Rights Project, in litigating pension discrimination cases under existing civil rights law applicable to the employment context,³ we have some observations to make about the need for and feasibility of federal legislation which will eliminate the discriminatory practices of non-employer insurance companies. Finally, we will address some of the overstated cost arguments asserted by opponents of the legislation.

THE ISSUE ADDRESSED BY S. 372 IS FUNDAMENTALLY ONE OF OUR NATION'S CIVIL RIGHTS POLICY

It is a most fundamental principle of the American tradition that no individual should be considered simply as part of a racial, sexual, religious, or ethnic group, or treated differently because of his or her membership in that group. Insurance remains one of the few areas in American life where blatant intentional discrimination is not only permitted, but is virtually required, and up until recently, persistently and uniformly defended by the industry in question. Although most insurance companies have now discontinued the use of racial classifications,⁴ and have rejected religious classifications on social policy grounds, they steadfastly maintain the practice of using sex-based classifications. There is no principled reason for rejecting classifications based on race and religion, while retaining the classification based on sex. The same equitable considerations apply to all three classifications,

¹ The ACLU is a nation-wide, non-partisan organization of over 250,000 members dedicated to protecting fundamental civil liberties, including the right of all persons to equal treatment under the law.

² See ACLU Testimony in Support of S. 2204, before the Senate Committee on Commerce, Science and Transportation, July 15, 1982.

³ Recognizing that denial of equal rights and opportunities for women is a pervasive problem at all levels of society, public and private, the ACLU established its Women's Rights Project over a decade ago to work toward the elimination of gender-based discrimination. Sex discrimination in insurance and employee pension plans has been of particular concern. ACLU attorneys with the Project represented *amici curiae* in *City of Los Angeles v. Manhart*, 435 U.S. 702 (1978). This term, ACLU Project attorneys represent *amici curiae* in *Arizona Governing Committee v. Norris*, No. 82-52, cert. granted, (October 12, 1982). ACLU Project attorneys also represent plaintiffs-appellees-petitioners in *Peters v. Wayne State University and TIAA-CREF*, 476 F. Supp. 1343 (E.D. Mich. 1979), rev'd 691 F. 2d 235 (6th Cir. 1982), petition for cert. filed, No. 82-794 (Nov. 10, 1982), a Title VII challenge by women employees and retirees to the University's provision, through TIAA-CREF, of lower periodic retirement benefits to women than to similarly situated men, and have participated on behalf of *amici curiae* in *Spirit v. TIAA*, 475 F. Supp. 1298 (S.D.N.Y. 1979), aff'd in part and rev'd in part, 691 F. 2d 1054 (2d Cir. 1982), petition for cert. filed, No. 82-791 (Nov. 9, 1982).

⁴ For a discussion of the racially discriminatory practice of insurance "redlining," see Testimony of Althea T. L. Simmons submitted on behalf of the NAACP before this Committee on April 12, 1983.

and it is deeply offensive to principles of legal equality to suggest otherwise. Use of sex-based classifications by insurers results in all women paying more for health and disability insurance, and receiving less in pensions and annuities than similarly situated men, regardless of their individual characteristics. No individual woman, regardless of how healthy she is, and no older woman, regardless of how soon she may be expected to die because of an illness, can ever overcome the classification into which she is put because of her sex. Group classifications based on sex, which attribute to all individuals the average characteristics of the group and which therefore measure individuals based on the characteristics of the group taken as a whole, should now be rejected for the same reasons that we have rejected similar classifications based on race or religion.

The insurance industry has justified its choice of gender as a classification on the ground that it is based on sound statistical data. But relying upon statistically-based conclusions essentially begs the question, and is therefore irrelevant as a means of addressing the underlying social policy issue.⁵ Any characteristic, if statistically measurable, can become the basis of an actuarially justifiable classification. But that doesn't make it right. For example, classification by religion will show that the mortality rates for Mormons are substantially lower than those of the general population, and that by age 65 Jewish mortality rates are higher than those for the total population at age 65.⁶ Yet, insurance companies properly do not use religion as a classification characteristic. Classification by race will show that whites as a group live longer and suffer less sickness and disability than blacks as a group. But that doesn't mean that it's right to measure individual blacks by such group differences. It was not so very long ago that higher life insurance rates for individual blacks, once the custom, were justified by insurance companies as "dictated entirely by actuarial findings."⁷ Nevertheless, these practices have been widely prohibited as racially discriminatory⁸ and firmly repudiated by major insurance companies, which now issue life insurance policies without race-based price distinctions. The real question underlying S. 372 is whether we as a nation are willing to countenance discrimination in our treatment of individuals solely on the basis of membership in a group defined by sex, race, religion or national origin.

We don't dispute the fact it is convenient for insurance companies to use sex-based classifications (just as it was once convenient to use race-based classifications). Insurance companies use sex groupings as a rough substitute or proxy for individual characteristics, such as health or personal habits (smoking or drinking), which are more closely and demonstrably related to mortality, longevity, and morbidity than the sex of the policy holder.⁹ Employers once engaged in the same sort of indidious

⁵ As explained in Brilmayer, Hekeler, Laycock, and Sullivan, "Sex Discrimination in Employer-Sponsored Insurance Plans: A Legal and Demographic Analysis," 47 U. Chi. L. Rev. 505, 512 (1980), it is "circular to use the expectancies generated by a predictor to justify using that predictor."

⁶ See, Estrom, "Cancer Mortality Among Mormons," 36 *Cancer* 825, 839 (1975); Fauman & Mayer, "Jewish Mortality in the United States," in *Ethnic Groups of America: Their Morbidity, Mortality and Behavior Disorders*, Vol. I, 36 (Shiloh & Selavan, Eds. 1973).

⁷ James, *The Metropolitan Life: A Study in Business Growth* (New York, Viking Press, 1947) pp. 338-39. See Statement of Herbert S. Denenberg, then Pennsylvania Insurance Commissioner, Prepared for Hearing on Economic Problems of Women before the Joint Economic Committee of the U.S. Congress on Women's Access to Credit and Insurance, 4 (July 12, 1973); see also Simball, "The Purpose of Insurance Regulation: A Preliminary Inquiry in the Theory of Insurance Law," 45 Minn. L. Rev. 471, 496 (1961); Fellers & Jackson, "Noninsured Pensioner Mortality: The UP-1984 Table," *Proceedings, Conference on Actuaries in Public Practice*, 456, 459 (1976).

Unfortunately, not all such justifications for race-based rates are in our past. One commentator, recognizing the contradiction between rejecting race classifications and maintaining sex classifications, has recently argued that the additional risk of sickle cell anemia in blacks or Tay-Sachs disease in Jews, which may be reflected in higher mortality rates for those racial and ethnic groups, should be accounted for by charging higher life insurance rates for blacks and Jews. See Benston, "The Economics of Gender Discrimination in Employee Fringe Benefits: *Manhart* Revisited," 49 U. of Chi. L. Rev. 489, 511-512 (1982).

⁸ Numerous states prohibit such race-based discrimination. See *Ariz. Rev. Stat. Ann.* §20-283, sub. 2 (West 1980); *Ark. Stat. Ann.* §§66-3005(7g) (1979); *Cal. Ins. Code* §§10140, 10141 (West 1972); *Conn. Gen. Stat. Ann.* §§38-61(10) (West 1972); *Ill. Ann. Stat.* §73-1031, sub. 3 (Smith-Hurd 1980); *Ky. Rev. Stat.* §304.12-085 (Bobs-Merrill 1971); *Md. Ann. Code* §§482-234A, sub. (a), (b), 48A-234AA, sub. (a), (c); *Mass. Ann. Laws* §175:122 (1979); *Mich. Comp. Laws Ann.* §500.2082 (West); *Mont. Code Ann.* §§33-18-210; *N.J. Stat. Ann.* §17:29B-4, sub. (c), (d) (West 1973); *N.Y. Ins. Law* §40(10) (McKinney 1966); *N.D. Cent. Code Ann.* §26-30-04(11) (1972 and 1981 Supp.); *Ohio Rev. Code Ann.* Title 39 §3911.16; *R.I. Gen. Laws* §§42-62-11, 42-62-14 (1977); *Wash. Rev. Code Ann.* §§40.60.175, 40.60.178 (West 1962).

⁹ See Brilmayer, Hekeler, Laycock, Sullivan, "Sex Discrimination in Employer-Sponsored Insurance Plans: A Legal and Demographic Analysis," 47 U. of Chi. L. Rev. 505 (1980).

but convenient groupings when they hired only men for jobs which required strength because they believed that men on the average could lift heavier loads than women on an average, regardless of the fact that some individual women could perform the job. They too measured all individual women by group averages. Such employment practices are now illegal. Life expectancy differences between men and women, similarly reflect nothing more than sex-based group averages applied to individuals.¹⁰ No individual woman is guaranteed a longer life than an individual man. In fact, most women do not live longer than most men of the same age. Of a random group of 1,000 men and 1,000 women at age 65, 84 percent will match in death ages.¹¹

The critical question as a social policy matter is which group classifications should be tolerated as means of classifying individuals, and providing insurance companies with an actuarially justifiable basis for doing business. Each individual has many different average life expectancies depending on the characteristic applied and the group average measured. For example, a new-born black male in South Carolina has 8 different life expectancies, depending on whether his sex, race or residence are used as "predictors" of life expectancy. If he is classified as a non-white male South Carolinian, his life expectancy is 58 years. If he is classified simply as a resident of the United States, his life expectancy is 71 years. The other possibilities range in between: he may be a non-white male American (61 years), a male American (67 years), a non-white American (65 years), or a South Carolinian (68 years).¹² Every person can similarly point to characteristics which could actuarially demand lower and higher insurance rates simultaneously. All of these life expectancies are actuarially sound. All measure average life expectancies of this group or that. None measures the individual, however. Insurance requires the use of some group classifications but as a matter of principle, sex-based insurance classifications must be rejected as contrary to civil rights policy, just as race-based classifications have been rejected in the past.

The need for Federal legislation

Federal legislation is needed to set a uniform standard of non-discrimination in insurance. The proposed legislation would do this while leaving the states free to administer their own anti-discrimination systems. In states which enact the anti-discrimination provisions as state law and establish administrative systems to process alleged violations, individuals will be required to seek their remedies in that state system. This would preserve for the states their status as primary regulators of the insurance industry, provided they maintain, as a minimum, the federal anti-discrimination standard.

Although insurance regulation has traditionally been left to the states,¹³ examination of state legislation reveals its inadequacy and inconsistency on this issue.

¹⁰ The present greater life expectancy for women in the United States is largely explained by environmental and behavioral factors that are subject to change. Greater longevity for women as a group is a relatively recent phenomenon. It first became typical as recently as the 1930s in the United States and Europe. Use of sex-based mortality tables for life insurance pricing did not become widespread in this country until the 1950's.

In Contrast, greater male longevity has persisted in parts of Asia, Africa, and Latin America, i.e., in 73 percent of the world's population that lives in less developed countries. Much of the dramatic increase in sex mortality differences in this country in the last sixty years can be accounted for by behavioral factors such as smoking, drinking, and reckless driving. For example, one study indicates that increased male smoking appears to have accounted for 75 percent or more of the 1910-1962 increases in sex mortality differences in the United States. Recently, however, many men have quit smoking, and women represent the fastest-growing group of new smokers. Sex mortality differences have been subject to variation throughout history, and are subject to change from behavioral patterns and the environment. See Brilmayer, *et al.*, *supra* note 9 at 542-559.

¹¹ See *Norris v. Arizona Governing Committee*, 671 F.2d 330, 332 n.1 (9th Cir. 1982); *Reilly v. Robertson*, 360 N.E.2d 171, 176 (Ind. 1977); B. Bergmann and M. Gray, "Equality in Retirement benefits," 8 Civil Rights Digest 25 (1975).

¹² See Brilmayer, *et al.*, *supra*, note 9 at 512.

¹³ Even though the states have been the primary regulators of the insurance industry, Congress unquestionably has the power to enact S. 372, as a regulation of commerce. See *United States v. Southeastern Underwriters Ass'n*, 322 U.S. 533 (1944). Contrary to the claims of some opponents of the legislation, the McCarran-Ferguson Act does not provide otherwise. It merely outlines the following rule of construction:

"No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by

Until recently, no state prohibited sex discrimination in rates or premiums for life, health, disability or annuity policies. In April 1983, the Montana legislature passed the first such non-discrimination provision, which will take effect in 1985.¹⁴ Only four states, Michigan, Massachusetts, North Carolina and Hawaii, prohibit sex discrimination in rates or premiums for auto insurance. Some states now prohibit sex discrimination in the issuance or renewal of policies (thus addressing the issue of availability of insurance to women), but have failed to address the issue of discrimination in pricing.¹⁵ California's insurance code actually requires differentials in ordinary life insurance and individual life annuities based on sex where they are "substantially supported by valid pertinent data segregated by sex."¹⁶ The only way to effectively end sex discrimination in insurance is to uniformly prohibit it through federal legislation such as S. 372.

S. 372 is consistent with other Federal anti-discrimination law

Because of Acts of Congress, women across this country have a measure of legal rights in employment (Title VII of the Civil Rights Acts of 1964, 42 U.S.C. § 2000e et seq.; the Equal Pay Act of 1963, 29 U.S.C. § 206(d); the Pregnancy Discrimination Act of 1978, 42 U.S.C. § 2000e(k)), in credit (the Equal Credit Opportunity Act, 15 U.S.C. § 1691 et seq.), and in some aspects of education (Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, et seq.). Under a line of landmark Supreme Court constitutional decisions, women have also gained a measure of equality under certain other federal laws, including Social Security,¹⁷ and state laws, such as Workers' Compensation.¹⁸ Insurance remains virtually untouched by these advances, except in the employment setting.

Under Title VII and the Equal Pay Act, employers offering fringe benefits (such as pensions, health or disability benefits, and other types of coverage) must provide such benefits to employees on a non-discriminatory basis.¹⁹ Over the last two decades, a substantial, well-reasoned body of federal law has developed establishing two basic principles for employee pension and retirement plans: 1) both employee contributions and benefits must be equal, and 2) employers found in violation of the law must "equalize up," i.e., pay benefits at the rate of the preferred sex.

Current Federal Anti-Discrimination Law Mandates Equal Employee Retirement Benefits As Well As Equal Employee Contributions.—This rule is premised on the Title VII principle that individuals are to be treated for employment purposes not as members of groups which have historically been the target of discriminatory treatment, but on their individual merits.²⁰ *City of Los Angeles Department of*

any state for the purpose of regulating the business of insurance . . . unless such Act specifically relates to the business of insurance."

15 U.S.C. § 1012(b). The Fair Insurance Practices Act specifically relates to the business of insurance, and is fully consistent with the McCarran-Ferguson Act.

For a recent example of the enactment of federal standards for insurance policies, see the Social Security Disability Amendments of 1980, Pub. L. 96-265, 94 Stat. 441, 42 U.S.C. § 1395ss (certification of medicare supplemental health insurance policies).

¹⁴ Montana House Bill No. 358, signed into law on April 19, 1983, provides that it is an "unlawful discriminatory practice for any financial institution or person to discriminate solely on the basis of sex or marital status in the issuance or operation of any type of insurance policy, plan, or coverage or in any pension or retirement plan, program, or coverage, including discrimination in regard to rates or premiums and payments or benefits."

¹⁵ See Ark. Stat. Ann. § 66-3005(7g) (1979); Colo. Rev. Stat. § 10-3-11-4 (1) (F) (iii) (Supp. 1978); Fla. Stat. Ann. § 626-9541 (24) (West Supp. 1979); Ky. Rev. Stat. § 304.12-085 (Supp. 1978); Md. Ann. Code §§ 48A-234A, 48A-234AA (1978); Mass. Gen. Laws Ann. Ch. 175 § 24A (West 1977); Mich. Comp. Laws Ann. § 500-2027 (Supp. 1979-1980); N.D. Cent. Code § 26-30-04 (11) (1981); N.Y. Ins. Law § 40-e (McKinney Supp. 1978-79); R.I. Gen. Laws §§ 42-62-11, 42-62-14; Wash. Rev. Code Ann. § 49.60.178 (Supp. 1978).

The following states prohibit discrimination in the availability of insurance based on race, color, creed, or national origin, but do not prohibit such discrimination based on sex. Ariz. Rev. Stat. Ann. § 20-384, sub.2 (West 1980); Cal. Ins. Code §§ 10140, 10141 (West 1972); Conn. Gen. Stat. Ann. § 38-61 (10) (West Supp. 1979); Ill. Ann. Stat. § 73-1031, sub. 3 (Smith-Hurd 1980); Mont. Code Ann. § 33-210; N.J. Stat. Ann. § 17.29B-4, sub. (c), (d) (West 1979); Ohio Rev. Code Ann., Title 39 § 3911.16.

¹⁶ See Cal. Ins. Code § 790.03(f) (West Supp. 1979). In contrast, another provision of California's insurance code explicitly prohibits the use of race, color, religion or national origin or ancestry as a condition or risk for which a higher rate premium or charge may be required for life or disability insurance. See Cal. Ins. Code § 10140 (West 1972).

¹⁷ E.g., *Califano v. Goldfarb*, 430 U.S. 199 (1977); *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975).

¹⁸ See *Wengler v. Druggists Mutual Insurance Co.*, 446 U.S. 142 (1980).

¹⁹ See EEOC's Title VII Guidelines, 29 C.F.R. § 1604.9(f), 37 Fed. Reg. 6835 (April 5, 1972), and 29 C.F.R. § 1604.9(e); see also, EEOC's proposed Equal Pay Act Guidelines, Proposed 29 C.F.R. § 1620.4 and 1620.5, 46 Fed. Reg. 43848 (September 1, 1981).

²⁰ Remedial affirmative action constitutes a partial exception to this principle. It is used only where past discrimination is found, and in any event, is never an absolute bar to individuals not

Water & Power v. Manhart, 435 U.S. 702 (1978) (Title VII forbids an employer from requiring women to pay higher contributions than men to fund a pension plan that pays equal benefits). The Supreme Court recently reaffirmed the principle that so-called "bottom line" fairness to blacks or women as a group does not excuse discriminatory practices which harm individual members of the protected group. See *Connecticut v. Teal*, — U.S. —, 102 S.Ct. —, 73 L.Ed. 2d 103 (1982).

Unequal provision of retirement benefits has been held to be a violation of Title VII in numerous cases decided prior to the Supreme Court's decision in *Manhart*. Plans requiring women to retire earlier than men, or blacks earlier than whites, were found unlawful under Title VII. *Peters v. Missouri Pacific R.R.*, 483 F.2d 490 (5th Cir.), cert. denied, 414 U.S. 1002 (1973) (race); *Bartmess v. Drewrys, U.S.A., Inc.*, 444 F.2d 1186 (7th Cir.), cert. denied, 404 U.S. 939 (1971) (sex); *Fillinger v. East Ohio Gas Co.*, 4 FEP Cases 73 (N.D. Ohio 1971) (sex). In addition, plans paying lower monthly benefits to male early-retirees have been held unlawful under Title VII.²¹ *Chastang v. Flynn & Emrich Co.*, 541 F.2d 1040 (4th Cir. 1976); *Rosen v. Public Service Electric & Gas Co.*, 477 F.2d 90 (3d Cir. 1973); *Fitzpatrick v. Bitzer*, 390 F. Supp. 278 (D. Conn. 1974), rev'd on other grounds, 519 F.2d 559 (2d Cir. 1975) (failure to award attorney's fees), aff'd in part, rev'd in part on other grounds, 427 U.S. 445 (1976) (failure to award back pay).

Following *Manhart*, virtually every court which has considered the question has held that *Manhart's* reasoning with regard to unequal employee pension plan contributions applies with equal or greater force to the unequal payment of retirement benefits. See, e.g., *Spirt v. TIAA-CREF*, 691 F.2d 1054 (2d Cir. 1982), petition for cert. filed, Docket No. 82-791 (Nov. 9, 1982); *Retired Public Employees' Association of California (RPEA) v. California*, 677 F.2d 733, 735 (9th Cir. 1982), petition for cert. filed, Docket No. 83-262 (August 14, 1982); *Norris v. Arizona Governing Committee*, 671 F.2d 330, 334 (9th Cir. 1982), cert. granted No. 82-52 (Oct. 12, 1982); *EEOC v. Colby College*, 589 F.2d 1139, 1144 (1st Cir. 1978); *Probe v. State Teachers Retirement System*, 27 FEP Cases 1306 (C.D. Cal. 1981); *Shaw v. I.A.M.*, 24 FEP Cases 995 (C.D. Cal. 1980); *Orr v. Kansas Public Employees Retirement System*, No. 78-4175 (D.Kansas, Memorandum and Order dated Feb. 5, 1980); *Hannahs v. New York State Teachers Retirement System*, 26 FEP Cases 527 (S.D.N.Y. 1981); *Women in City Government United v. City of New York*, 515 F.Supp. 295 (S.D.N.Y. 1981); see also *Sobel v. Yeshiva University*, 477 F.Supp. 1161 (S.D.N.Y. 1979); but see *Peters v. Wayne State University*, 691 F.2d 235, 240-41 (6th Cir. 1982), petition for cert. filed, Docket No. 82-794 (Nov. 10, 1982).

Employers Who Violate Federal Anti-Discrimination Law Are Required To Equalize Pension Benefits And Contributions, Including Optional Forms, At The Rate Of The Preferred Sex.—Courts have equalized optional employee retirement benefits at the preferred sex rate in remedying Title VII and Equal Pay Act violations. This means, for example, that if a man receives a guaranteed pension benefit of \$400 per month, and a similarly situated woman receives \$350 per month, the employer would be required to equalize benefits by paying the man and the woman each \$400 per month. The Equal Pay Act specifically provides that an employer may not lower the wage rate of any employee in remedying unlawful sex discrimination. See 29 U.S.C. § 206(d)(1). Title VII has also been construed to require equalization of benefits, including both back pay and prospective benefits, at the level promised to the favored sex. See e.g., *City of Los Angeles v. Manhart*, supra (applying the favorable contribution rate paid by men to women); *Fitzpatrick v. Bitzer*, supra (raising men's benefits under early retirement options); *Rosen v. Public Service Electric and Gas Co.*, supra (raising men's early retirement benefits); *Chastang v. Flynn & Emrich*

in the protected group. In insurance, no individual can ever overcome the classification into which her gender places her.

²¹ This practice also derives from the use of sex-based mortality tables. If retirement at age 60 is considered the "norm", and early-retiring employees are given the "actuarial equivalent" of normal retirement paid out over an additional number of years, there is a corresponding decrease in benefits paid each month. Use of sex-based tables to compute the "actuarial equivalent" results in women retirees receiving a higher monthly benefit than similarly situated men because a greater average life expectancy results in a lower percentage reduction of the "normal" benefit. For example, if a man retires at 60 with a life expectancy of 20 years, and a woman retires at 60 with a life expectancy of 25 years, their benefits would be reduced upon retirement at age 59 by 1/20 or 5% for the man and 1/25 or 4% for the woman. Thus, a man's early retirement payments are reduced by a higher percentage than a woman's payments. See *RPEA v. California*, 677 F.2d at 735 n.2 (9th Cir. 1982). If sex-merged tables were used, the "actuarial equivalent" for early retirement would be equal for men and women. Many pension plans in current use in fact do not use sex-based mortality tables to establish sex-differentiated benefits.

Co., supra (raising men's early retirement benefits); *RPEA v. California*, supra (raising benefits of members of the class of men and women "to the level received by similarly situated members of the opposite sex without reducing the benefits of any individual"); *Spirit v. TIAA*, supra (equalizing benefits without lowering the guaranteed rate of benefits paid to men).

The "Equalization Up" Principle Applies To Pension Plans And Contracts Existing Prior To The Effective Date Of Title VII And The Equal Pay Act.—Federal anti-discrimination law has been uniformly applied to contracts and pension plans in existence prior to the effective date of Title VII and the Equal Pay Act. A contrary rule (i.e., that the law applies only to future plans and contracts), would have meant that no current employees would have fully equalized benefits. Significantly, the "equalization up" principle has been applied simultaneously so that no employees' contractually promised benefits are lowered as a result of remedial relief. See, e.g., *RPEA v. California*, supra (rejection of state's argument that each employee's pension rights vested in incremental amounts upon the date of each contribution to the fund, and that Title VII applies only to benefits based on contributions made after effective date of Title VII); *Spirit v. TIAA*, supra 691 F.2d at 1068-1069 ("A result which did not affect past contributions . . . would effectively postpone full conversion to genderneutral tables for a much as 30 to 40 years.").

The "Equalization UP" Principle Has Been Applied To Active Employees And to Retirees.—Both active employees and retirees have been granted relief from discriminatory pension payments. At a minimum, courts have ordered equalization of benefits or contributions to be made in the future under existing plans or contracts. Some courts have in addition ordered back pay, i.e., payments compensating employees for the lower benefits or higher contributions which they paid in the past. In *Manhart*, however, the Court declined to order back pay (refunds to women for their past contributions), because there was "no reason to believe that the threat of a backpay award is needed to cause other [employers] to amend their practices to conform to this decision," 435 U.S. at 721.

In cases brought by retirees, courts have ordered both prospective relief and back pay. In the pre-*Manhart* case of *Fitzpatrick v. Bitzer*, male early-retirees sought an award of backpay as compensation for losses caused by the employer's (the state of Connecticut) past discriminatory benefits payments. The Court ordered recalculation as of 1974 of payments and benefits due each retired male member of the retirement system. In *Chastang v. Flynn & Emerich* the Fourth Circuit ordered equalization up for all men who retired (as early-retirees) after the effective date of Title VII. See also *Rosen v. Public Service Electric and Gas Co.*, supra. In the *RPEA* case, a post-*Manhart* decision, the Ninth Circuit ordered equalization of benefits for those pension recipients who retired after the effective date of Title VII, and backpay for discriminatory benefits paid since the *Manhart* decision in 1978. In another post-*Manhart* case, *Probe v. State Teachers' Retirement System*, supra, the court ordered that all retirement benefits paid in the future be equalized for class members (retirees and future retirees). *Accord Norris v. Arizona Governing Committee*, supra.

The Title VII and Equal Pay Act cases mark an important trend toward the elimination of gender-based actuarial tables. At the same time, they reveal the insufficiency of litigation under Title VII and the Equal Pay Act as a complete solution to the problem. These laws apply to employers. They do not apply to insurance companies unless they are found to be the agents of employers or employers themselves.²² The pending Supreme Court pension discrimination cases under Title VII, therefore, will not resolve the questions presented by this legislation. The pending Supreme Court cases, including *Arizona Governing Committee v. Norris*, raise the issue of whether it is an unlawful employment practice under Title VII of the Civil Rights Act of 1964 for employers to provide employee retirement plans which pay smaller monthly annuity benefits to women, solely because of their sex. The central issue addressed by this legislation, in contrast, is whether insurance companies, regardless of their connection to an employment context, may discriminate on the basis of sex in the setting of rates or premiums. The proposed legislation is fully consistent with the Supreme Court's rulings under Title VII in *Manhart*, and the post-*Manhart* decisions in the lower courts. Nevertheless, the Court's ruling in *Norris* and in other pending Title VII cases will not resolve the issues posed by the present discriminatory practices of insurance companies which are not reached by Title VII.

In sum, in its present form, S. 372 provides a necessary and consistent complement to present anti-discrimination law. If the provisions in S. 372 requiring equal-

²² See 42 U.S.C. §§ 2000e-2(a) and 2000e(b): e.g. *Manhart*, 435 U.S. at 718, n. 33; *Spirit*, supra, 691 F.2d 1054 (2d Cir. 1982); *Peters*, supra, 691 F. 2d 235 (6th Cir. 1982).

ization of benefits under existing contracts were modified, as urged by New York City's Mayor Koch and others, however, inconsistency between current federal anti-discrimination law and S. 372 would be created for employer-sponsored pension plans. In essence, Mayor Koch urges special exemption from current federal anti-discrimination law in the form of an amendment to this bill. This effort to undercut employees' well-established rights under civil rights statutes must be rejected as the last ditch effort by New York City, already held to be in violation of Title VII, to avoid its responsibilities under current law.²³

Outside of the employment context, Title VII litigation can exert only indirect pressure on insurance companies by increasing employer demand for gender-neutral policies. Insurance companies will still be free to market policies based on sex-segregated tables to individuals and to employers, who would then be required by Title VII to absorb the additional costs of equalizing female and male pension and life insurance benefits. By setting a uniform standard of non-discrimination, S. 372 would do directly, completely and uniformly what Title VII can only do indirectly and partially. It would also eliminate the competitive pressure for insurance companies to set rates based on sex.²⁴

The cost of implementing S. 372

Opponents of S. 372 assert that it would be excessively costly to implement. These assertions have been severely overstated.

Contrary to the claims of critics, the provisions of S. 372 regarding benefits under existing contracts need not result in staggering increased costs for insurers and employers.—S. 372 provides that premiums due and benefits paid under existing contracts cannot, after the bill's effective date, be calculated based on the prohibited classifications. This protects both the insurers and the insureds. Insurance companies are entitled to modify the premiums due under existing contracts if it is necessary to comply with the Act. However, they are not permitted to decrease benefits due insureds under existing contracts.

Claims of enormous potential cost to insurers and employers as a result of this bill have been asserted primarily with regard to employer-sponsored pension plans. However, it is simply untrue that S. 372 imposes new large obligations on employers which they do not otherwise face under Title VII. Indeed, for those employers who fund their pension plans through insurance contracts, S. 372 may prove to be a guard against future or accumulating liability. Some insurance companies have resisted employer efforts to convert to sex neutral contracts. The sooner these contracts are converted, however, the sooner the employer is relieved of its obligation to pay retirees additional amounts to equalize the otherwise discriminatory benefits paid under the insurance contracts.

The cost of eradicating sex discrimination in pensions through Title VII has also been greatly exaggerated.—It is true that if plaintiffs prevail in Title VII challenges to employer-sponsored pension plans, employers may have to modify their employee contribution and benefit payment levels in order to comply with Title VII requirements. However, insurers and employers often overstate these compliance costs. In estimating costs, employers often refer to hypothetical, and in fact, unnecessary "transfers" of benefits from men to women. An examination of benefits actually promised under the contracts demonstrates that equalization of benefits to men and women can often be accomplished without reducing benefits to men (or women), and without massive infusions of funds other than those already available for distribution as discretionary dividends.

For example, in "defined contribution plans" (such as the TIAA-CRDF system), benefits provided under variable annuity contracts may be equalized with very little cost to employers or insurers. Variable annuity contracts provide no guaranteed fixed benefit, and therefore can be equalized merely by applying sex-neutral mortality tables to compute an equal entitlement to the plan's investment return. Those benefits provided under contracts with fixed guaranteed benefit amounts can be equalized up to the higher guaranteed male level without infusions of additional money merely by distributing already available discretionary funds in a manner which will result in equal payments to similarly situated male and female retirees. Fixed benefit amounts in such contracts are typically set based on extremely conservative interest rates or estimates of investment return (such as the rate of 2½

²³ See Statement on the Impact of S. 372 On The City of New York and Its Employees Submitted to this Committee on Behalf of the Plaintiff Class in *Women in City Government United v. City of New York*, April 12, 1983.

²⁴ See, Note, "Sex Discrimination and Sex-Based Mortality Tables," 53 B.U.L. Rev. 524, 655 (1973).

percent in a TIAA contract at issue in the *Spirt* case), so that a large proportion of benefits paid to participants are amounts in addition to the promised contract benefit. According to TIAA's figures, guarantees made at the time contributions were paid to TIAA accounted for only 36 percent to 52 percent of the amounts paid in 1980 to typical annuitants who retired in 1970-1979.²⁵ Adjustments to equalize payments to men and women can therefore be made under existing TIAA contracts without decreasing the guaranteed contract rate to men, and without requiring the employers to expend large amounts to equalize benefits.

In defined benefit plans, benefits are paid on a sex-neutral formula, based on various wage and length of service formulas. These plans, therefore, already provide equal periodic benefits for similarly situated men and women workers. Certain benefit elections, such as joint and survivor options, are based on the actuarial value of the normal benefits, and therefore are often computed using sex-based mortality tables. Many large defined benefit plans offer sex neutral joint and survivor options, however, including the General Electric, UAW, Steelworkers, and IBM plans. Of those state and local employees covered by defined benefit plans, 30.5 percent are covered by plans which provide sex-neutral joint and survivor options.²⁶

The plans that do use sex-based mortality tables to compute joint and survivor benefits could feasibly change to sex-neutral tables. Assuming that employees make option elections at the time of retirement, the cost of equalization would be limited to present retirees. Here again, because of the common conservative practice of using an interest assumption lower than the expected rate of return, many plans have accumulated funds which could be used to equalize benefits to present retirees. Any excess of investment earnings over the assumed rate usually shows up as an actuarial gain for the year in question, but there continues to be an overstatement of actuarial liabilities for all future years of operation.²⁷ Such overstatements have been used by employers to greatly inflate the actual potential costs of complying with Title VII.

Critics have grossly exaggerated the impact of S. 372 on the cost of casualty, health and life insurance policies.—Most casualty, health, and some life insurance policies provide coverage for the same relatively short period of time in which premiums are paid. When the renewal time comes, the terms can be altered. New contracts with adjusted premiums could be issued in most of these cases within a very short period of time after the bill's passage.

In issuing individual auto, health, and life and annuity policies, insurers commonly make individualized determinations, and can consider a large number of behavioral and medical factors. Behavioral and medical classifications, such as whether the insured is a high risk driver, a smoker or non-smoker, or in good or bad health, are more clearly related to accidents, mortality and morbidity than are sex or race.²⁸ Abandoning sex as a predictor would not reduce the validity of the insurer's predictions. Moreover, any additional expense in abandoning the use of sex as a factor would be marginal where the insurer was already using a number of factors to make individualized determinations.

Pregnancy-related health insurance

Finally, the ACLU also views this legislation as an opportunity to end discriminatory limitations on health insurance coverage, in situations not already covered by Title VII, for pregnancy and related conditions. The fact that insurance providers often deny such coverage to women while covering other medical procedures that are only performed on men is one of the most blatant examples of the discriminatory patterns still embedded in the industry's practices. Maternity benefits are frequently subject to waiting periods of up to 10 months. This is justified on the grounds that it discourages "adverse" selection by pregnant women, although rarely do such policies make exceptions for unplanned events such as miscarriage or other pregnancy complications. Some states still allow total exclusion of conditions related to female reproductive organs. In spite of these limitations, women are charged 50 to 60 percent more for health insurance than men.²⁹ Even with exclusion of mater-

²⁵ See, Brief of Eight Individual Actuaries as *Amici Curiae* in *Norris* at p. 12; Affidavit of Richard Daskais dated April 21, 1981 filed in *Spirt v. TIAA*, *supra*.

²⁶ Pension Task Force Report on Public Employee Retirement Systems, March 1978, cited in U.S. Department of Labor, Cost Study of the Impact of an Equal Benefits Rule on Pension Benefits (January 1983) at 81.

²⁷ See McGill, *Fundamentals of Private Pensions*, 3rd Ed. (1975) at 324-327.

²⁸ See Brilmayer, et al., *supra* note 9.

²⁹ Naerman & Brannon, "Sex Discrimination in Insurance" in United States Commission on Civil Rights, *Consultation on Discrimination Against Minorities and Women in Pensions and*

nity benefits, women pay more than men for health insurance. We urge Congress to ensure that this legislation permits, in situations not covered by Title VII, full health insurance coverage for pregnancy and related conditions, including abortions.

Conclusion

There is no principled reason for rejecting classifications based on race and religion, while retaining the classification based on sex. Nothing recommends the current sex-based distinctions except the inertia of tradition. If there are problems to be solved in order to effect the transition from a discriminatory system to a fair one, then we should commence to solve those problems. Simple justice demands no less.

The CHAIRMAN. I would say this. If that was the only problem, I think we could reach a compromise. There are some who oppose this bill on a matter of philosophy. They want to classify on the basis of men and women and keep it regardless of whether the cost problem can be solved.

Mr. GLASSER. Well, I would trust that they are in a small minority, at least in Congress.

The CHAIRMAN. I hope so.

Dr. Gray.

Dr. GRAY. Thank you, Mr. Chairman.

I am Mary Gray. I am professor of mathematics, statistics, and computer science at American University. I am here primarily to assist with questions concerning the economic impact of S. 372 and underlying statistical issues.

I should like to say that the coalition of women's groups, civil rights groups, consumer groups, and labor unions who are supporting S. 372 is not oblivious to concerns about the cost of its implementation. We spent a great deal of time and effort on analysis, and a great deal more time and effort trying to get at the underlying assumptions and data behind the insurance industry's inflated figures.

I should like to summarize our conclusions just briefly. First of all, as we know, there are no real retroactive provisions to the bill. All of its relief is totally prospective, but it does apply to existing contracts, it provides prospective relief on existing contracts, as we have done in all sorts of other civil rights legislation. No one who has a lease on an apartment house which called for the apartment house to remain all white was able to have that lease enforced when we passed fair housing laws. This has the same kind of application to existing contracts.

Now, there will be some costs to the insurance industry, but they will be minimal, primarily administrative, and, unfortunately, passed on to us as policyholders, but that is something we have to face. The concern about the purported grave consequences of the equalization of premiums and benefits in existing life insurance contracts is really unfounded, since the bill itself provides for alternative methods of dealing with this which would be at essentially no cost.

The costs of equalizing annuities are minimal because most are employment-related and thus already covered by title VII of the Civil Rights Act of 1964. There are also costs to consumers, and it is true, some consumers will pay more and some consumers will

pay less once S. 372 goes into effect. However, no one has the right to a continued economic benefit deriving from discrimination against others. That is our firm belief, and we hope that that is the firm belief of Congress.

States and cities and other employers also need have no concerns about S. 372, since their employee benefit plans are already covered by title VII, and S. 372 imposes no additional burdens. In fact, S. 372 does nothing more than extend traditional civil rights protection to an important economic area of life. It would relieve the cost of discrimination against women and blacks and other minorities with no disastrous effects on anyone.

Thank you.

[The statement follows:]

STATEMENT BY DR. MARY W. GRAY, PROFESSOR OF MATHEMATICS, STATISTICS AND
COMPUTER SCIENCE, AMERICAN UNIVERSITY

Thank you, Mr. Chairman. I am here primarily to assist with questions concerning the economic impact of S. 372 and underlying statistical issues. I should like to say that the coalition of women's groups, civil rights groups, consumer groups and labor unions who are supporting S. 372 are not oblivious to concerns about the costs of its implementation. We have spent a great deal of time and effort on analysis and a great deal more time and effort trying to get at the underlying assumptions and data behind the insurance industry's inflated figures.

I should like to summarize our conclusions: the costs to the insurance industry will be minimal, primarily administrative, and they will be passed along to policyholders. The concern about the purported grave consequences of the equalization of premiums and benefits in existing life insurance contracts is unfounded since no cost alternatives are permitted by the bill. The cost of equalizing annuities are minimal because most are employment-related and thus already covered by Title VII of the Civil Rights Act of 1964.

Some consumers will pay more and some will pay less when S. 372 goes into effect. However, no one has the right to a continued economic benefit deriving from discrimination against others.

States and cities and other employers need have no concerns about S. 372 since their employee benefit plans are already covered by Title VII and thus S. 372 imposes no additional burden.

In fact, S. 372 extends traditional civil rights protection to an important area of economic life; it would relieve the costs of discrimination against women and blacks with no disastrous effects on anyone.

The coalition of civil rights groups, women's groups, consumer groups and labor unions which supports S. 372 has been concerned about the economic impact of the legislation. While we believe that the costs of discrimination should no longer be borne by the disadvantaged groups, we also would be less than responsible if we did not consider the costs of eliminating this discrimination. In particular, the insurance industry and other interest groups have come forward with cost estimates to which we have given careful attention. I should like to summarize the results of our work on the issue of costs.

There are three general areas of economic impact:

- (1) Costs to the insurance industry.
- (2) Costs to consumers.
- (3) Costs to employers, particularly states and municipalities.

Let me take these one at a time.

1. Costs to the insurance industry

Life insurance companies claim that if they increase death benefits on existing men's policies so that their cost per dollar of benefit is equal to that of women, the increase in reserves required by state regulation will, in many cases, exceed the surplus available. Thus the companies will be "statutorily bankrupt."

This analysis ignores the provisions of S. 372 which permit other means of equalization. The companies could choose instead to decrease premiums for men; this would, of course, result in decreased cash flow and in some problems with so-called "deficiency reserves," but the reserve problem would be considerably less severe than were benefits to be increased. Finally, premiums for women could be increased

(or more reasonably, premiums for both men and women could be adjusted to a unisex rate). This has no reserve or cash flow implications, except that policyholders might examine their coverage more closely than usual and do some shopping around.

Several other considerations are important in demonstrating the exaggerated nature of industry claims. Cash values of policies are not, in our view, affected by S. 372 and therefore no money is required to make any alterations. Secondly, so-called "surpluses" are not the only sources of funds available for increasing reserves. Finally, participatory policies in which premiums and benefits are affected by the declaration of dividends or other variable types of payments would cost the companies nothing to equalize since the discretionary amounts available could be used for equalization.

The second aspect of industry costs deals with annuities. Both of these problems are what the industry chooses to call "retroactivity" problems. In fact, S. 372 has no retroactivity provisions. There is no requirement that past excessive premiums be refunded or that past benefits be supplemented. The bill would apply purely prospectively. Benefits and premiums would have to be equal as of the effective date of the bill.

It is the case, however, that the bill does cover existing contracts—just as the minimum wage law called for the alteration of existing contracts which provided for substandard wages, just as the Equal Pay Act required that the wages of those under existing employment contracts be equalized, just as *Brown v. Board of Education* required that existing schools be desegregated, rather than maintained in a segregated fashion until they fell down. Policyholders have no more right to rely on discriminatory insurance rates than apartment dwellers on a lease that provided for whites only in their building. There is no reason why contracts of insurance deserve special exemptions from civil rights principles.

Nonetheless, it is the case that there are real costs involved in equalization of benefits, particularly on annuities which are completely paid for, costs which cannot be recouped from policyholders through increases in premiums. We wish that we could tell you what those amounts are. In order to consider whether cost concerns might somehow justify certain compromises to the principle of non-discrimination, we have tried to get detailed breakdowns on costs for different categories of policies—employment-related versus non-employment-related, particularly versus non-participatory, etc. We have tried to get from insurers a detailed account of the assumptions underlying their costs estimates—assumptions as to interest rates, assumptions as to percentages of people who will choose certain options, etc. We have been unsuccessful.

However, we are able to assert that it is our view that Title VII has required for many years that employment-related pensions and annuities be equalized so that S. 372 imposes no additional costs for the vast majority of pensions and annuities. The insurance industry figure most widely quoted for costs in this field are those from a Labor Department study which, while refuting earlier exaggerated industry claims, understandably dealt only with employment-related plans. Many non-employment-related plans are based on some sort of variable payout to be determined either at time of retirement or later; for these there is no cost to the insurer of equalization because the guarantees (if any) are so low (being based on low interest rates) that the guarantee can be met and the excess used to equalize benefits without the infusion of additional funds.

The only real cost is with respect to annuities whose rate has been fixed, for which there is no provision for modification and on which payment has begun. The costs for equalization are a tiny percentage of the total funds involved in annuities and pensions, much less of the money involved in all lines of insurance.

The reasons why the costs are such a small percentage of the total costs include:

(1) There are relatively fewer current annuitants than deferred annuitants and their annuities, representing amounts deemed many years ago to be adequate for retirement, are relatively small;

(2) There are relatively few non-employment-related annuities;

(3) Because of past discrimination there are few women among these annuitants, and the women there are drawing relatively smaller benefits.

With respect to other categories of insurance—health, disability, auto—the costs to the industry are merely administrative since the policies are relatively short-term and subject to continual change in rates and conditions. In fact, because changes are made so frequently anyway, even the administrative costs directly attributable to the elimination of discrimination are very minimal.

2. Costs to consumers.

If some people pay less, others will pay more. No one has a right to benefit forever from discrimination against others. Indeed, it is possible that in the case of life insurance some women will pay more. However, the differences in female rates among different companies are greater than the differences in male and female rates in a given company so that women may actually save if they shop around, particularly if they have older policies. Many differences are minimal anyway; at one company the rate per month for \$100,000 insurance for a thirty-year-old woman is quoted at 11 cents a month more than for a thirty-year-old man. On the other hand, women are frequently the beneficiaries of men's life insurance policies so that if men get more benefits for the same premiums, it is the women who eventually collect. Who is to say who gains from abolishing discrimination in life insurance? We think that here as elsewhere everyone ultimately benefits from the elimination of discrimination and the establishment of fair practices.

Men may well have to pay more for health and disability insurance and get less in annuities, but we must remember that the 84% of men whose death ages match those of women are currently getting the benefit of their short-lived male colleagues even though they themselves have the same longevity as their female colleagues who get less each month and less in total lifetime benefits. Moreover, the 30 percent of men who choose the joint and survivor option will get, in many plans, increased benefits; but that will certainly benefit the women who are their spouses and survivors.

In auto insurance the picture is the exact reverse of what is depicted by the industry. They speak of a transfer of \$700 million from young women to young men. In fact, if miles driven were substituted for gender as a risk classification factor, rates for young men and women would, on the average, change very little. But, women over twenty-five would pay an average of 25 percent less.

The industry hypothesizes the demise of the private health insurance business if S. 372 passes; it is an industry gravely troubled already. Private health insurance is prohibitively expensive for most women; therefore only those who know they have severe health problems buy it. That means that their claims record is bad and that their rates go up even more. Perhaps under unisex rates many men will also find rates prohibitively high; on the other hand, perhaps sharing the risk across a larger population will bring the cost down to where women who are better risks will feel they are able to afford it. That is, maybe business will be better, not worse. In fact, we do not know for certain what will happen; we do think that the industry does either. The other problems with health care and insurance are far more serious and more real than any speculative impact of S. 372.

3. Costs to employers

Employee benefit plans, including insurance and pensions, are covered under Title VII of the Civil Rights Act of 1964. The exact remedies for violation of Title VII are a matter for the courts' discretion. The cost of remedies may be great but employers have had ample time to comply, ample time to adjust contribution and benefit levels. S. 372 does not alter the application of Title VII. It does close a potential loophole; employers might somehow seek to evade responsibility by contracting with an insurer for a discriminatory plan. No court has held that employers can evade Title VII obligations in this fashion, but the Supreme Court has not spoken to the issue.

In any event, self-insured employers, particularly cities and municipalities, have Title VII obligations unaltered by S. 372. It should not be used as a vehicle for evasion of these responsibilities, even if they are costly. On the other hand, such costs cannot legitimately be attributed to the bill.

We are concerned about the nearly million-dollar campaign chest which has been put together by the insurance industry—in part from the premiums of the very groups the industry opposes on this bill—to defeat S. 372. We are particularly disturbed by the misleading information being circulated; I have attached an advertisement and my refutation of it.

Conclusion

The costs to the insurance industry of S. 372 would be largely minimal administrative costs. Some policyholders would pay more and some less, but no one advantaged by discrimination has a right to continued economic benefit at the expense of the disadvantaged. Employee benefit plans are already covered by Title VII so that S. 372 imposes no additional costs on employers such as states and cities.

Reponse to advertisement of the so-called Committee for Fair Insurance Practices.
Industry Assertion: On the average, women live seven years longer than men.

Fact: 85 percent of men and women have identical death ages.

Industry Assertion: Women have half as many accidents as men.

Fact: Women drive far fewer miles than men; miles driven is the best predictor of accident rates.

Industry Assertion: Under S. 372/H.R. 100 any facts related to gender would have to be ignored by insurance companies when they compute rates.

Fact: The legislation simply extends to insurance the prohibition on discrimination on the basis of race, sex, national origin and religion now applicable in education, employment, housing and credit.

Industry Assertion: Women will pay \$360 million more for life insurance.

Fact: Women currently pay as little as 11 cents a month less than men for \$100,000 of insurance. Even if every woman in the country had such a policy, the increase in premiums by going unisex would be less than \$360 million.

Industry Assertion: Women will pay \$700 million more for auto insurance.

Fact: If miles driven were used to compute auto insurance rates, women under 25 would pay about the same while women over 25 would pay 25 percent less.

Industry Assertion: States and cities would be required to pay billions of additional tax dollars to adjust pension plan benefits retroactively.

Fact: States and cities are already required to have non-discriminatory pension plans; S. 372/H.R. 100 requires nothing of them not already required by Title VII of the Civil Rights Act of 1964. Moreover, S. 372/H.R. 100 has no retroactive provisions; it provides purely prospective relief.

S. 372/H.R. 100 is a civil rights bill; it will provide for fair insurance rates for all.

The CHAIRMAN. Thank you very much, Doctor.

Ms. Greenberger.

Ms. GREENBERGER. Yes. Thank you, Senator Packwood.

I am Marsha Greenberger, with the National Women's Law Center, and I would like to address in the summary of my remarks two basic points that have been made today, first, that in essence gender-based rates are properly used and that women are enjoying a pricing discount as a justification for continuing current sex-based rates, and second, that to change those practices and apply them to current contracts would raise constitutional questions.

With respect to the first point that has been made, that gender-based rates are properly used, that women somehow are getting a benefit out of the current system, I think that a careful review of the facts shows that neither of those assertions are correct. In fact, women seem not to be getting the advantages in the way the system works in any regard at the present time, and there are serious economic motivations behind efforts to eliminate sex-based discrimination in insurance.

In looking at the life insurance and pension and annuity systems as they are now set up, basically, women get a 3-year life insurance advantage in rates. There is no question that that bears no relationship to the actual life expectancy advantage that they have at different ages. When it comes to pensions and annuities, they are penalized for far longer periods of time than the advantage they are given in life insurance. As a result, basically, they wind up being severely disadvantaged at a time in their lives when they are older.

There are statistics in my testimony that demonstrate the really grave, dire economic circumstances that older women in this country face today. It is a cruel policy to tell women in this country that when they reach older age, they have to retire on smaller amounts and have smaller amounts available to pay for their rent and food than do men.

Second, with respect to the argument in terms of constitutionality of the application of this bill, there was a Congressional Re-

search Service report that went through some of the highlights of case law that is established time and time again that application of legislation to current contracts is fully constitutional.

There was a recent Supreme Court decision decided just this term where industries made similar arguments. They have made them again and again in court cases with lawyers assuring that those arguments can be made and should be pressed all the way to the Supreme Court, and again and again those kinds of retroactivity arguments have been struck down. The Supreme Court has reaffirmed that it is appropriate to address current contracts, it is appropriate to change expectations when it is in the public good, and I think there can be very little question that eliminating discrimination in insurance is certainly furthering public good.

Thank you.

[The statement follows:]

STATEMENT OF MARCIA D. GREENBERGER, NATIONAL WOMEN'S LAW CENTER

I am Marcia D. Greenberger, Managing Attorney of the National Women's Law Center. I welcome the opportunity to express my support for the Fair Insurance Practices Act as written, and to address in particular the application of the Act to life insurance, annuities and pension plans.

This Committee has heard many reasons why this legislation is needed to cure discrimination in all lines of insurance. Today, I will summarize the injustices women suffer as a result of discriminatory practices in life insurance, annuities and pension plans and review the serious economic disadvantages faced by women as a result of this discrimination. Further, I will review the relationship of this legislation to laws already prohibiting discrimination in employer-provided insurance, the fact that only limited costs to the insurance industry would result from enactment of S. 372, and that this legislation follows the well-established model of civil rights legislation enacted in other areas—affecting only payments, contributions, and benefits made after the effective date of the legislation.

WOMEN ARE DISADVANTAGED BY CURRENT SEX-BASED INSURANCE PRACTICES

1. Insurance Practices are Arbitrary and Unfair.—The discrimination women face in pensions, annuities and life insurance is blatant. Rates and benefits are not only routinely based on gender, but are applied in a way which consistently disadvantages women.

I would like to first discuss pensions and annuities. Given the dire economic problems women face as they get older, pensions and annuities are extremely important as a needed source of income.

The statistics are startling. Older women's income is only 58 percent of the income of older men.¹ Half of all older women have incomes below or within \$400 of the official poverty level. In fact, 72 percent of the elderly poor are women.² These severe economic burdens faced by older women are exacerbated by the insurance industry's discriminatory practices.

In pensions and annuities, for example, many insurance companies presume that all women will live 6 to 9 years longer than all men. This presumption is applied despite the fact that approximately 84 percent of women and men live for the same number of years.³ As a result of this presumption, the periodic benefits all women receive under such plans are smaller by substantial amounts than those received by all men.

Moreover, this full 6- to 9-year penalty is imposed on women despite the fact that by the time they reach retirement age, their life expectancy advantage is only 4

¹ In 1981, the median annual income for older women was \$4,757 while the median annual income for older men was \$8,173. Coalition on Women and the Budget, "Inequality of Sacrifice: The Impact of the Reagan Budget on Women," p. 57 (Mar. 16, 1983).

² *Id.*

³ *Noris v. Arizona Governing Committee*, 671 F.2d 330, 332 n. 1 (9th Cir. 1982), cert. granted, No. 82-52; *Reilly v. Robertson*, 360 N.E.2d 171, 176 (Ind. 1977).

years greater than that of men.⁴ Therefore, many women's annuities and pensions are reduced by more than twice their actual life expectancy advantage.

Yet, when we turn to life insurance, we find life insurance companies providing women with a rate advantage based only on a 3-year longer life expectancy. Life insurance, moreover, is often purchased by women at younger ages, when their life expectancy advantage is far greater than when they retire. Clearly, life expectancy differences between men and women are applied in such an inconsistent manner by the insurance industry that, contrary to its claims, those differences cannot be at the heart of differences in rates either for pensions or life insurance.

Further, when one examines life insurance rates charged women, the dramatic discrepancies among companies for the same policies demonstrates again that sex-based mortality tables play a minor role at best in the setting of rates. Attachment A hereto contains an advertisement for a \$50,000 5-year renewable term life insurance policy, which compares rates charged for men and women by the 10 largest U.S. companies that sold the plan. The rates charged varied widely, with a number of companies charging higher rates for women than other companies charged for men. Moreover, the differences companies charged for their male and female rates varied dramatically. For example, at age 25, the differential was 2.6 percent at one company and 24.6 percent at another. At age 45 it was 8 percent at one company and 67.2 percent at another. These numbers plainly show that whatever factors are considered in pricing, actual life expectancy differentials for men and women play a very minor role.

Moreover, the insurance industry has chosen to adopt pricing which artificially inflate sex-based rating differences. Companies routinely add on a charge for servicing the insurance contract which is computed as a percentage of the base rate of the contract. By using a percentage rather than a flat fee, sex differentials in the base rate are widened. Yet, there is no necessary relationship between the cost of servicing the contract and the base rate that would justify use of the percentage. Rather, a flat rate applying to all contracts could reflect the actual costs of servicing, and substantially narrow the sex-based rate differentials which presently exist.

In sum, pricing policies are arbitrary, inconsistent and clearly not based on any principle reflecting true life expectancy differentials between women and men. Rather, the only consistent principle is that the differentials have been applied in a manner which disadvantages women.

2. Women will not be hurt by the elimination of sex-based rates.—In the face of these facts, insurance companies have argued that eliminating sex-based rates will hurt women, that they know best what women need, and that women's groups are, in the words of one insurance company newspaper advertisement, "seducing" Congress. Insurance companies would have this Committee believe that they should be able to continue their business as usual—callously claiming to set rates to advantage women, while, in fact, systematically penalizing them in pensions, annuities and life insurance.

Contrary to the industry's claims, S. 372 would not hurt women economically. Obviously, with regard to pensions and annuities, women's benefits would be increased. This increase is particularly important, for as discussed above, women are in particular economic need and can ill-afford discriminatory lowering of their benefits when they are elderly.

Moreover, women need not face increased life insurance rates as a result of S. 372, despite industry scare tactics claiming such results would occur. First, companies have the option of raising men's benefits or lowering men's rates to achieve gender neutrality. Given the large profits being earned on many of these life insurance policies, as I discuss below, the route of raising benefits or lowering premiums is a viable one.

Further, when other more appropriate risk predictors are substituted for sex, and applied fairly, it is clear that many women's life insurance rates should not go up. When factors such as weight, smoking and family health history are substituted, many women will enjoy the low rates to which their health status fairly entitles them.

S. 372 DOES NOT ADD SUBSTANTIAL COSTS OR BURDENS TO INSURANCE PROVIDERS

We have heard cries from insurance companies, as well as certain state and local governments, that the costs of S. 372 are enormous. These assertions are blatantly false.

⁴ January 7, 1983, Amicus Brief of the Lawyers' Committee for Civil Rights Under Law and the NAACP Legal Defense and Education Fund, *Arizona Governing Committee v. Norris*, supra.

1. *All employer-provided insurance must be sex neutral—S. 372 adds no further costs to employer-provided plans.*—All like insurance, annuities and pension plans provided by employers to employees must be sex neutral both as to benefits and contributions. Substantial amounts of insurance are employer-provided. In fact, the great bulk of pensions in this country are so provided, and therefore already subject to laws prohibiting sex discrimination.

Employer-provided insurance is considered compensation to employees, and is therefore covered by Title VII of the 1964 Civil Rights Act, and the Equal Pay Act of 1973. See, e.g., *Los Angeles Department of Water and Power v. Manhart*, 435 U.S. at 712 n. 23 (1978); *Laffey v. Northwest Airlines, Inc.*, 366 F. Supp. 763, 789 (D.D.C. 1973), *aff'd* in relevant part, 567 F.2d 429, 443, 478 (D.D. Cir. 1976), *cert. denied*, 434 U.S. 1086 (1978). Moreover, the *Manhart* case confirmed that Title VII prohibits employers' requirements of larger contributions for female employees than similarly situated males to receive the same monthly pension benefits. The *Manhart* case did not allow differences in life expectancy to justify women's payment of larger contributions.

Similarly, cases have held that employers may not provide smaller monthly pension benefits to women. See, e.g., *Norris v. Arizona Governing Committee*, *supra*; *Teachers Insurance and Annuity Association v. Spirt*, 691 F.2d 1054 (2nd Cir. 1982) *pet. for cert. pending*, No. 82-913. *Women in City Government v. City of New York*, 515 F. Supp. 295 (S.D. N.Y. 1981); *Retired Public Employees' Assoc. of California v. California*, 677 F.2d 733, 736 (9th Cir. 1982), *pet. for cert. filed*, 51 U.S.L.W. 3140 (1982); but see *Peters v. Wayne University*, 691 F.2d 235 (6th Cir. 1982) *pet. for cert. pending*, No. 82-794.

The costs of eliminating discrimination in these employer-provided plans arises under Title VII and the Equal Pay Act.⁵ Therefore, Mayor Koch and others are erroneous in their claims that S.372 will create tremendous liabilities for state and local governments resulting from their sex-based employee pension plans. Employers such as the City of New York, which have persisted in providing smaller pension benefits to their female employees, are currently fully liable under laws prohibiting sex discrimination in employment.

In sum, most pension plans in this country, and substantial amounts of life insurance and annuities are employer-provided. Therefore the costs involved in eliminating sex-discriminatory practices from these plans does not arise from S. 372.

2. *Costs involved in elimination of discrimination in non-employer provided plans are reasonable.*—The costs involved in S.372 as it affects non-employer provided insurance are manageable. Although industry representatives have stated that the bill would cause severe financial hardship and bankruptcy of some companies altogether, close scrutiny of the nature of these insurance policies and a careful reading of S.372 reveal these claims to be unfounded.

Before analyzing the insurance industry's cost argument, however, I want to place their claims in perspective. Virtually every time a civil rights bill has been considered by Congress, industry representatives have come in and opposed the bill, claiming that the cost of treating people fairly would be too expensive. Congress put those arguments to rest, and enacted legislation, for example, in housing, credit, employment and education. The time has come to ban discrimination in insurance as well, and to deny claims that insurance companies cannot afford to end their discriminatory practice.

Clearly, compliance with S.372 may involve some administrative costs. Sex distinct actuarial tables will have to be discarded and gender neutral tables adopted. Benefits and premiums levels will have to be reviewed and re-assessed, and adjusted. However, changes required for compliance will be no more costly to the insurance industry than the cost that other business had to bear when complying with previous civil rights legislation. After the 1964 Civil Rights Act, employers had to change "business as usual," doing outreach to women and minorities, and developing job related tests, the housing industry had to abandon restrictive covenants and reform its listing procedures. All of these changes and related costs were the price of continuing to do business in changed circumstances, where discrimination was no longer tolerated. We fully expect that the insurance industry is as capable of handling the costs of complying with the Fair Insurance Practice Act as other segments of the business community when coverage of civil rights laws was extended to them.

Furthermore, important segments of the life insurance industry have already indicated their willingness to accept the cost of compliance by supporting S.372 prospectively. Just two months ago the Board of the American Council on Life Insurance

⁵ State and local laws may also prohibit this discrimination. See e.g., New York State Human Rights Law, N.Y. Execution Law (McKinney) § 290, et seq.

ance (ACLI) announced their support of the bill, though that position was recently rejected by the majority of ACLI members. Leading industry representatives, in coming out for the measure tacitly admitted that the costs of compliance could be absorbed.

Moreover, an examination of how S.372 will affect existing insurance policies provides further evidence that industry claims of financial disaster are invalid.

First, many life insurance policies are renewable. Underwriters are continually re-assessing premium rates and adjusting them to the changing experience of the policyholder. Hence when the requirement that unisex tables replace sex-distinct tables becomes effective, very little additional work will be necessary to bring these policies into compliance.

Moreover, the added costs of changing contracts in the course of payment are reasonable costs. We dispute the industry claims that the cost will be as onerous as they suggest, not only because the bill allows the life insurance industry several options for compliance which the companies fail to address, but also because companies are economically able to comply using the combination of options provided by the bill.

First, the bill allows the life insurance industry to raise rates. If, in fact, the insurance companies can justify such rate increases, the legislation would not be a bar.

Moreover, the other options of raising benefits or lowering rates are fully available. Though we have heard many cries about depleted reserves and statutory insolvency from the industry if these approaches are elected, the facts put these cries in perspective. Even as the companies are making these claims, some have gratuitously raised benefit levels of life insurance contracts. With these candid admissions from several companies that they in fact are profitable enough to increase benefit levels because of market factors, they can clearly adopt gender neutral tables without raising premiums. Further, many whole life, annuity and pension plans have projected a much lower rate of return—3 or 4 percent—and hence guarantee participants a much lower benefit, than in fact they actually earn or eventually offer. Because investments are returning substantially more than the 3 or 4 percent projected by the plans, they have significantly more money to pay out in benefits than participants are lead to believe. In fact, one major life insurance company, which has claimed it would be "statutorily insolvent" if it raised benefit levels pursuant to S. 372, in fact has ample profits to avoid such a result. It has listed large dividends it plans to issue as liabilities, on its books, and then claims its liabilities are too high if added benefits to equalize by sex would be paid. In fact, this company could reduce its liabilities by more than the full amount of equalization benefits that would be added if it so decided. By that course of action, its problems of "statutory insolvency" would dissolve.

S. 372 IS NOT RETROACTIVE IN EFFECT

In an attempt to discredit this legislation, insurance companies have argued that the bill is "retroactive" in effect, and therefore is improper, if not unconstitutional. These claims are without merit.

S. 372 does require that all benefits, contributions and premiums be computed on a sex-neutral basis after the effective date of the Act. S. 372 rejects the approach originally urged by ACLI,⁶ that discrimination be allowed to continue in existing contracts into the indefinite future—a future which could extend over decades.

The application of anti-discrimination laws to existing contracts is common. The Equal Pay Act, for example, applied to existing contracts. Employers who hired a fixed number of employees based on fixed wage obligations were required to increase those obligations after the effective date of the statute, even though the contract was entered into before the law was passed. Similarly, Title VII applies to existing contracts, no matter how long standing. When the Pregnancy Discrimination Act was passed in 1978, it required existing employer-provided insurance contracts to be changed to include pregnancy coverage as of the effective date. Title VI of the 1964 Civil Rights Act, and Title IX of the Education Amendments Act of 1972 add new nondiscrimination obligations to existing contracts. See 34 D.F.R. § 100.2. See also the Fair Housing Act of 1968, 42 U.S.C. §§ 3601-3619.

Moreover, courts have consistently upheld the application of new statutory requirements affecting existing contracts in widely varying circumstances. The Supreme Court has held that changing settled expectations is not necessarily illegal. Rather, the question is whether the legislation represents a rational means to

⁶ ACLI now seems to be urging that no discrimination be prohibited at all.

achieve legitimate ends. *Usery v. Turner Alkhorn Mining Co.*, 428 U.S. 1, 18 (1978). In *Usery*, the court stated:

"[O]ur cases are clear that readjusting rights and burdens is not unlawful . . . even though the effect of the legislation is to impose a new duty or liability based on past acts." *Id.* at 16-17. citations omitted.

See also *Energy Reserves Group v. Kansas Power & Light Co.*, 51 U.S.L.W. 4106 (Jan. 24, 1983); *Nachman Corp. v. Pension Benefit Guaranty Corp.*, 592 F.2d 947 (7th Cir. 1979), *aff'd* on other grounds, 446 U.S. 359 (1980); *S & M Paving v. Const. Laborers Pension Trust*, 539 F. Supp. 867 (C.D. Cal. 1982).

The question at hand is whether it is rational for S. 372 to apply to existing contracts in order to achieve the legitimate end of eliminating discrimination. The bulk of continuing contracts are pensions, annuities and whole-life insurance. However, there are relatively few pensions of annuities which are not employer-provided and therefore most already are covered under nondiscrimination provisions. Therefore, the question must be answered in the context of whole-life and some renewable guaranteed-rate term life insurance policies. In fact, the industry has based the bulk of its objections to the bill's application to existing contracts on whole-life policies. However, the industry's arguments are weak.

The life insurance companies have reaped enormous profits from these whole-life policies. Their terms were set based on interest rate assumptions far below those which in fact have been earned. It is in these very policies that insurance companies have voluntarily raised benefits because of the enormous profits earned. To tell these policyholders that the sex discrimination they suffer must continue throughout their lives for as long as they hold these policies would be cruel and unjustifiable.

CONCLUSION

The American Council on Life Insurance has recently changed its position from willingness to eliminate sex-based rates and benefits for future policies to total opposition to the bill. Use of sex-based rates, which only came into use in the 50's, 60's, and for some major companies even the 70's, is now advanced as an essential business practice which must be retained for all time.

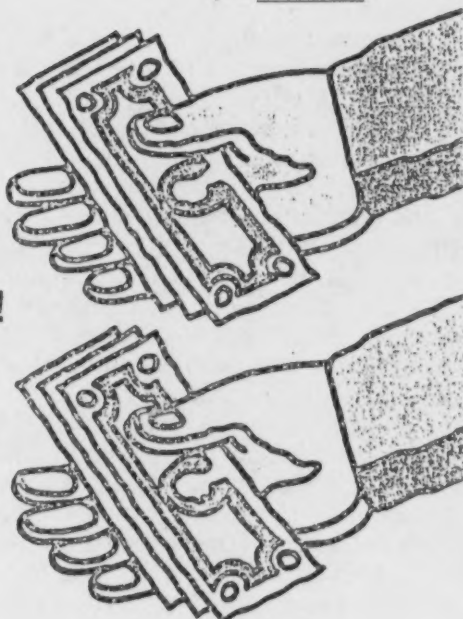
Clearly, the insurance industry has profited from its sex-based practices. Clearly, it would like to continue to reap these profits undisturbed by concerns about fairness. But women in this country cannot afford to pay inflated rates and continue to tolerate discrimination against them. The insurance companies can live without classification on the basis of sex. Women insist that they do.

Why pay up to
twice as much
as you should
for your next
life insurance
policy?

You don't have to!

As a member of the education and research communities, you are uniquely eligible for low-cost life insurance from Teachers Insurance and Annuity Association—a dramatic benefit to you, your family, and your pocketbook in these inflationary times.

For an idea of how much you can save with TIAA, just compare these costs for \$50,000 5-Year Renewable Term policies from TIAA and the ten largest U.S. companies that also sell this extremely popular plan:



APPENDIX A

20 Year Average Annual Costs* for \$50,000 5-Year Renewable Term Policies

	Policies Issued to Men			Policies Issued to Women		
	Aged 25	Aged 35	Aged 45	Aged 25	Aged 35	Aged 45
TIAA	\$ 91.00	\$189.80	\$445.00	\$ 73.00	\$126.00	\$281.80
Aetna Life	214.50	344.00	793.50	209.00	295.50	629.50
Bankers Life	213.50	343.00	759.00	192.50	295.00	595.50
Equitable	183.00	334.00	745.50	154.50	275.00	584.00
John Hancock	203.50	326.00	723.50	193.50	291.50	637.50
Moss Mutual	182.50	310.50	732.50	171.50	286.50	697.00
Metropolitan	123.50	233.00	617.50	109.00	190.00	465.50
New England Life	146.50	274.50	649.00	129.00	211.00	485.50
Northwestern Mutual	141.00	227.50	525.50	124.00	193.00	441.50
Prudential	150.50	239.00	552.00	130.00	179.50	336.00
Travelers	198.50	352.50	801.00	181.50	275.50	589.50
Mean Cost, Largest Companies	\$175.70	\$298.40	\$689.90	\$159.45	\$249.25	\$546.15
% Greater than TIAA	93%	57%	55%	118%	98%	96%

*Based on published 1980 premium rates and dividend scales (dividends not guaranteed), adjusted for interest (5%) to recognize the time value of money.
Source: Commerce Clearing House, Best's Financial Compendium.



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The CHAIRMAN. Thank you very much.

Mr. Bolin.

Mr. BOLIN. Thank you, Mr. Chairman.

My name is Jerry Bolin. I am president of Abraham Lincoln Insurance Co. of Springfield, Ill. I am pleased to appear before you today as president of the National Association of Life Companies, an organization of over 370 small- and medium-sized life and health insurance companies. I am accompanied today by Roy Woodall, the executive vice president of the association.

Our members fully support fair and equitable treatment for both men and women with respect to life and health insurance. However, we cannot endorse 372 because it would mandate inequitable rates and often result in higher life insurance costs for women. Moreover, the bill would impose unbearable new costs that would be particularly harmful to smaller life companies.

The insurance industry's practice of using sex as a basis for classifying risk does not entail unfair discrimination. Women live significantly longer than men, and generally have higher health claim costs. Our industry provides greater fairness to women than to men by taking these factual differences into account. This results in women generally paying less for some products, such as life insurance, because of the predictable, factually based risk involved.

To disregard the fact of sex-based mortality differences would result in unfair insurance prices.

The four basic points we wish to emphasize are, No. 1, the fair risk classification is essential. S. 372 would result in unfair premium rates which are not equitably based on cost. The risk classification system has produced great advantages to consumers in terms of reduced prices and greater availability of coverage. Equity rather than equality should be the proper goal.

Point No. 2, sex is a fair and necessary risk classification factor as the means of predicting mortality and morbidity. Sound statistical and actuarial data has established the fact that there are significant differences in mortality between men and women that cannot be explained by reference to other factors.

These differences mean different real cost for providing benefits to men and women. Smaller companies do not have a huge policyholder base. Therefore they cannot be forced to gamble on unsound mortality projections. If a viable alternative to using sex and risk classification were reasonably available, we would use it.

Point No. 3, S. 372 will have detrimental effects on women. Insurance provides financial security to men, women, single or supporting families. According to the Women's Equity Action League, 66 percent of women in the work force are widowed, divorced, unmarried, or work to raise their family income to above \$15,000.

This bill hits hardest at the women in these groups for the benefit of the less than 5 percent of women who are not covered by defined benefit pension plans that provide equal pension payouts. Many women's insurance costs are lower than that for their male counterparts. S. 372 increases their costs for life and auto insurance without giving them offsetting benefits in the pension area, where they are likely to be already covered by a unisex plan.

These women cannot afford to go with the argument that equality is worth the price. Their first concern is putting bread on the family table.

Point No. 4, S. 372 would have a disproportionate impact on small companies. The most important thing I can do today is explain that the burden of this legislation would fall most heavily on small companies who play an important role in the industry's responding to consumer's needs. For example, my company now serves the South Chicago market area of low-income people that was abandoned a few years ago by some of the largest companies.

S. 372, if enacted, would have a devastating cost impact on many life companies such as my own. We simply cannot absorb such costs. My own company would be financially devastated. My consulting actuaries tell me that the adjustment to men's and women's rates and benefits on individual life policies sold by us would require \$720,000 out of our present surplus of \$766,000. With the additional administrative and other costs that would be required, we would be insolvent, as would many other NALC companies.

Thank you, Mr. Chairman, for the opportunity to appear here today.

[The statement follows:]

STATEMENT OF JEROME E. BOLIN, PRESIDENT, NATIONAL ASSOCIATION OF LIFE COMPANIES

Mr. Chairman and Members of the Committee, my name is Jerry Bolin. I am President of Abraham Lincoln Insurance Company of Springfield, Illinois. I am pleased to appear before you today on behalf of the National Association of Life Companies (NALC), of which I am President, to present NALC's objections to S. 372, a bill which would prohibit making distinctions in insurance on the basis of race, color, religion, sex, or national origin.

Before explaining in more detail why we have serious concerns with S. 372 as presently drafted, I want to note that the NALC represents primarily small and medium-sized stockholder-owned life and health insurance companies. Today our association has over 370 member companies domiciled in 42 States. These companies account for more than 300,000 home and field office employees and over 80 million policyholders.

NALC's members do not discriminate in life and health insurance on the basis of race, color, religion or national origin. Our members fully support fair and equitable treatment for both women and men with respect to life and health insurance. However, we cannot endorse S. 372 in its current form because it would mandate inequitable rates, and often result in significantly higher life insurance costs for women. Moreover, the bill would impose unbearable new costs that would be particularly harmful to smaller stockholder-owned life insurance companies.

We believe that the insurance industry's practice of using sex as a basis for classifying risks does not entail unfair discrimination. Facts show that women live significantly longer than men, and that women generally have higher health insurance claim costs. Our industry has sought to provide greater fairness to women and to men by taking these factual differences into account. This results in women generally paying less for some products, such as life insurance because of the predictable, factually based risks involved. To disregard the fact of sex-based mortality and morbidity differences would result in unfair insurance prices.

Mr. Chairman, our member companies sincerely hope that your committee, which favorably reported similar legislation last year, will reconsider its earlier recommendations. Clearly, as evidenced by the report on last year's bill, there have been many misunderstandings concerning the insurance industry's practices and the true effects of this bill. I hope that our testimony today will help clarify some of the past misunderstandings and will aid you in more fully appreciating the adverse impact of certain of the bill's provisions, especially their harmful effects on many women and on smaller stock life insurers. Even though we do not favor prohibiting the use of sex to ensure fair risk classification, we certainly would seek to work with you to

develop a more workable and reasonable bill if the Committee decides to pursue this legislation. At a minimum, we believe the bill's most onerous requirements such as its retroactive application to existing contracts, its requirement to "top up" benefits and its coverage of individual contracts must be eliminated. Let me now elaborate further on our views on this bill.

Fair risk classification is essential

Most of the debate over S. 372 relates to its prohibition on using sex as a basis for setting insurance rates. This provision would result in unfair premium rates which are not equitably based on costs. To better understand why this would occur, it is helpful to consider the basic nature of insurance and risk classification.

Insurers try to establish fair prices through identifying the key risks involved and classifying these risks into groups so that persons with similar risks can be treated fairly. Premiums are established on the basis of the projected costs for the various risk classifications. Higher risks are charged higher premiums to cover higher costs. Lower risks are charged lower premiums to cover lower costs. Therefore, for example, 60 year old women are charged more for life insurance than 20 year old women because the risk of dying usually is far greater for 60 year old women than for 20 year old women.

Obviously, making distinctions in the risk classification process is essential to ensure the purchaser is charged a fair price in relation to the costs involved. The risk classification system has produced great advantages to consumers in terms of reduced prices and greater availability of coverage. The system is being constantly refined to take account of new factors and statistics that enable insurers to underwrite more substandard risks and price premiums more closely to the measurable risk involved. Equity, rather than equality, should be the proper goal. It would be inherently unfair in most cases to disregard different risks and simply charge a flat rate. If insurance rates are not set on the basis of projected costs to categories of risks, some people will pay far more than their fair share for insurance protection. NALC believes that neither women nor men generally would favor such inequities.

Our member companies are firmly committed to risk classification as a means of insuring fairness to policyholders, and of reliably projecting costs so that companies can maintain their financial integrity. The issue then becomes whether sex is an appropriate and necessary classification factor. NALC believes that it is not only fair, but it is essential to consider sex as a classification factor.

Sex is a fair and necessary risk classification factor

Life and health insurers generally utilize sex as a means of predicting mortality and morbidity. Why? Because sound statistical and actuarial data has established the fact that there are significant differences in mortality and morbidity between men and women that cannot be explained by reference to other factors. Thus, as a group, women live longer than men. Actuarial data also shows women's morbidity rates are higher up to around the age of 50 and then become lower. Past hearings on this legislation have documented such differences in detail.

We doubt if anyone present today is very surprised that such differences exist. What do these mortality and morbidity differences mean? These factual differences mean different real costs for providing benefits to men and women.

I want to underscore that insurers realize that there are other factors besides sex that are relevant in predicting mortality and morbidity. The accusation that insurers ignore factors other than sex is simply unfounded. Such factors—age, occupation, health, and certain aspects of one's lifestyle—also are taken into consideration where appropriate. However, while such other factors may weigh into a projection of mortality or morbidity, the fact remains that sex, like age, is a critical element which is highly reliable in predicting risks and therefore in projecting costs.

Insurers, particularly smaller insurers, must be able to make such reliable cost projections. Since most of our members do not have the huge policyholder base that the giant companies have, they are unable to distribute risks as broadly. Companies must not be forced to gamble on unsound mortality and morbidity projections. We cannot expect the government to bail out insurers whose rates prove to be too low to cover costs, and company losses or failures therefore would fall on policyholders and stockholders.

If viable alternatives to using sex in risk classification were reasonably available we would use them. Although actuarial science is constantly evolving, actuaries tell us that it has not yet reached the point where statistically sound projections can be made to accurately predict mortality and morbidity relying solely on factors other than sex. Sex classification, which generally is fair and accurate, therefore is essential for fairly evaluating many types of risks. Without such sex classification, premi-

ums would not be based on reliable projected costs. This would be totally counter to the normal functioning of the insurance marketplace.

Detrimental effects of S. 372 on women

We view the major purpose of insurance as helping to provide an important means of financial security to people whether they be men, women, single or supporting families. The availability of insurance in this country at a reasonable cost enables the average middle-class or lower income person to ensure the economic welfare of his or her dependents, without government assistance, to a degree that would not otherwise be possible.

Women increasingly are concerned with obtaining adequate insurance as a means to protect themselves and their dependents against the unpredictable risks that may severely strain their financial resources. About sixteen percent of American families now are single-parent families headed by women. According to the Women's Equity Action League (WEAL) sixty-six percent of women in the work force are widowed, divorced, unmarried or work to raise their family income to above \$15,000. A recent Labor Department study has indicated that 40 percent of women in the work force are single and 58 percent of minority women in the work force are single.

This bill would hit hardest at the women in these groups who most need the cost savings they presently have with respect to life and auto insurance rates. Young women struggling to make ends meet on a low salary to support young children cannot afford the significant increase S. 372 would cause in auto insurance costs, which has been estimated to be anywhere from 18-66 percent more than under sex distinct rates. Similarly, women thrown back into the job market by divorce who have young children to raise and who have minimal training and have to take low paying jobs cannot afford to lose the 15-25 percent savings they now have with respect to life insurance rates. These are the very women for whom cheaper auto insurance and cheaper life insurance are a matter of economic necessity.

S. 372 would appear to penalize these women for the benefit of those women who appear to be the primary beneficiaries of the bill: the small percentage of women who are not covered by defined benefit pension plans that provide equal pension payouts. A very high percentage of women in the work force already are covered by group pension plans that provide benefits on an equal basis for men and women. However, fifty percent of the women who have life insurance have an individual policy rather than a group policy. Virtually all auto insurance is purchased individually. For many women, the cost of such individual policies is lower than that for their male counterparts. S. 372 would increase these women's costs for life and auto insurance without giving them offsetting benefits in the pension area where they are likely to already be covered by a unisex plan. Women with minimal financial resources cannot afford to go with the argument that "equality is worth the price" when their first concern is putting bread on the family table and making the next rent or mortgage payment. We maintain the issue is equity not equality. Therefore, we strongly suggest excluding individual lines of insurance from the coverage of the bill in order to continue to give women the discounts which they are entitled to and which many need.

Disproportionate impact on small companies

Probably the most important thing I can do today is explain that the burden of this legislation would fall most heavily on small stock companies. When people think of life and health insurance, they often think only of the few relatively giant companies that have the resources to buy non-insurance businesses and to advertise heavily in the mass media. Such large companies, which have billions in assets, obviously are a vital part of the industry, and admittedly they have substantial administrative and legal staffs that often can better cope with new regulations than their smaller counterparts. Yet, it must never be forgotten that there are hundreds of smaller companies that have thousands of agents and stockholders, and that foster competition and provide important insurance products for millions of Americans.

Smaller insurance companies have played and continue to play an important role in increasing the coverage and decreasing the cost of insurance generally. Often these companies have responded to consumers' needs more quickly with innovative new products and marketing techniques. For example, an NALC company was one of the first companies to begin writing large amounts of "substandard" life insurance business. Other NALC companies have specifically sought to serve the low-income market or inner city market that is often abandoned by larger companies. Yet another NALC company is an innovator in specifically targeting the women's market. The life insurance policy developed by this company achieved a 33 percent

to 44 percent saving (depending on the amount of coverage) to a 25 year old woman over the company's previous rates. S. 372 as currently drafted would appear to preclude any company, such as this one, from advertising, marketing or offering policies to women that would give them the benefit of cost savings they deserve.

We recognize that an industry frequently alleges that pending legislative proposals will cost countless millions, and yet, after enactment, the affected industry somehow accommodates its practices to the new law and remains economically viable. Therefore, it is understandable that Committee Members and their staff may often discount such cost arguments. However, I can assure you that S. 372, if enacted in its present form, in fact would have a devastating cost impact on many life insurance companies. Small stock life companies such as my own simply cannot absorb such costs.

There are roughly 2200 life insurance companies in the United States. Of these, about 135 are mutual companies, which tend to be much larger than stock companies. The largest mutual company, the Prudential, had assets in 1981 of \$62.5 billion, as compared with my company, Abraham Lincoln Life, which had assets of \$8.3 million. In fact, after the first few hundred life companies, the remaining 1500 plus companies are relatively quite small. Most of these companies are stockholder-owned companies. As such, they do not have the "redundant" premium of mutual companies that serves as a "cushion" against unanticipated expenses, or the large surpluses of some large stock companies. These smaller stock companies also do not have the huge policyholder base through which the giants in the industry can spread costs.

For many smaller companies, each new regulatory burden, when considered along with the cumulative impact of existing regulations, makes it more difficult to compete meaningfully. Inappropriate regulatory proliferation not only increases costs to insurance consumers, but it can lead to increased failures of smaller companies or their forced merger with larger companies, thereby reducing the number of competitors within the insurance marketplace.

Retroactive application of S. 372 cannot be tolerated

The most harmful aspect of this bill on small companies is its retroactive application. Companies would be required to equalize benefits and premium rates for existing policies. This would mean that companies would have to provide substantial additional benefits without having received payments for the costs of such benefits. Companies would have to "top up" benefits on existing policies and contracts.

This retroactive "topping up" would be very unfair and would financially devastate many smaller stock companies. Companies' liabilities could be increased by 10 to 20 percent or more. In many cases, the additional reserves that would be required would exceed a company's net worth. In addition, high administrative costs would be required.

I understand that you are receiving data from the ACLI which demonstrates the high costs that many life insurers, particularly larger companies, would incur. We are seeking to obtain more cost data from smaller companies. Some NALC companies have already submitted estimates to us concerning the impact of S. 372 on their operations. One small company reported that the bill would require its reserves to be increased by an amount greater than the company's surplus of roughly \$5.5 million. In addition, this small company estimated that its administrative costs of complying with the new requirements would range between \$180,000 and \$250,000. We believe comparable cost increases would be found in most companies. Another of our members estimated increased liabilities under S. 372 would be \$75,000,000. Based on the company's 1982 statutory balance sheet this would have wiped out the company's capital and surplus of \$37,347,000 and left a deficit of \$37,752,000.

Mr. Chairman, our nation's hundreds of small companies simply cannot and should not bear the burden imposed by the present draft of S. 372. My own company, Abraham Lincoln would be financially devastated. My consulting actuaries tell me that adjustments to men's and women's rates and benefits on individual life policies sold by my company would require approximately \$720,000 out of our present surplus of \$766,412. If you top this off with the additional administrative and other costs that would be required, we would be insolvent.

Other concerns

As I indicated earlier, NALC's overriding concerns over S. 372 relate to its retroactive application and its coverage of individual policies. There are other aspects of the bill which also cause us concern. For example, it is unclear whether group make up and experience could be taken into account in group contracts. The bill also contains a punitive damages provision that we believe is quite excessive and inappro-

priate. Section 4(c)(2) of the bill prevents payments under existing contracts from being decreased, while premiums could be raised only if "clearly necessary" to comply with the nondiscrimination requirements. Some Congressional staff have suggested that this should be a strict standard. Such a standard would provide no relief from the costly burden imposed by this bill.

Another problem arises because the bill would be effective 90 days after enactment. Most smaller companies do not employ their own actuaries. Instead, they must rely on consulting actuaries who perform services on a contract basis. It would be very costly, and perhaps impossible for many small companies to obtain the necessary outside help that would be required to adjust premiums and benefits and existing and current products and put these changes into effect within 90 days.

NALC also believes that insurance regulations should remain at the state level. Congress long ago established the basic policy through the McCarran-Ferguson Act that insurance is generally to be regulated at the state level.

Rate distinctions on the basis of sex have been carefully examined by the states, and state authorities generally sanction sex-based classification. State officials recognize that this rating factor is fair and justifiable. Congress should not preempt state officials' judgements in this area.

Conclusion and summary

In conclusion, I would like to briefly summarize NALC's position. The insurance risk classification system has lowered costs and widened availability of coverage for all consumers of insurance including women. Sex is an important and necessary factor in the risk classification process. It helps ensure fair insurance prices. If S. 372 is enacted, many women will not receive equitable treatment. A large group of women that will face substantially higher costs are the single, divorced or widowed women who must support a family on a low income. This group is significant in size (about 66 percent of women in the workforce) compared to the small percentage of women in the workforce (less than 5 percent) who would benefit from increased pension benefits.

Small companies have played an innovative role in fostering competition and in providing new insurance products at lower costs. Unfortunately, S. 372 as currently drafted would pose especially severe financial problems for such small companies. It would strain the reserves of some and lead to insolvency for others. Small stock life insurers do not have the operating margins, reserves or dividend structures of larger companies to absorb these costs. Therefore, we ask you to reject or substantially modify this well intentioned but practically unworkable bill.

Thank you for the opportunity to appear here today. I will be glad to answer any questions.

The CHAIRMAN. Thank you very much, Mr. Bolin.

Before I start on some substantive questions, let me make sure—can someone explain to me—Dick, maybe you can—the difference in membership between the National Association of Life Companies and the American Council of Life Insurance, and if there is some cross membership?

Senator SCHWEIKER. Well, there is a lot of cross membership. Yes, Mr. Chairman. The American Council of Life Insurance Companies has 572 members and represents about 96 percent of the life insurance that is in force. I think the other association represents a great number of very small companies, some of which are in our association.

The CHAIRMAN. But basically both associations would have roughly the same interest, life and health? They both write life and health? On occasion you run across associations where literally they are at antagonistic purposes with each other, although allege to represent the same group. In this case, you both basically have the same types of membership, except Mr. Bolin's may have a greater number of smaller companies. Is that correct?

Senator SCHWEIKER. In general, that is true, Mr. Chairman.

The CHAIRMAN. Thank you.

Now, Mr. Houser, in the statement that you and Mr. Filer filed, is the statement:

There was a period of time when most, if not all companies were charging the same life insurance premium rates for women and men. During that time, the difference in mortality rates between women and men in the United States population was relatively small.

When was that?

Mr. HOUSER. The shift to sex-distinct rates occurred at different times with different companies, and usually in the latter 1950's or early 1960's. My company went over to a price break for women in 1959.

The CHAIRMAN. And the reason you went over is because the life expectancy tables changed at that time?

Mr. HOUSER. For several reasons. I think that several things were happening. There was a growing awareness that the mortality differential between men and women was widening, not narrowing. The mortality differential by race was never as large as the differential by sex, and while the differential by race was narrowing, the sex differential by sex was widening.

Another factor is that women became an important part of the marketplace. They began to buy life insurance policies. When they were buying very few of them, they were not important in the market. They became important in the market, and it was at that point in time that the industry pretty much en masse went to sex-distinct tables.

The CHAIRMAN. But this is important, because I want to make sure I understand this. The tables began changing and the mortality rates for women began widening vis-a-vis—

Mr. HOUSER. The differential between men and women widened, yes.

The CHAIRMAN. So this means the differential is not really biological and immutable from Adam and Eve onward?

Mr. HOUSER. I think you would find ample evidence that it is biological, because it starts even before birth, and it continues for every year of life thereafter. At a typical insurance age a woman's rate of dying is about 60 percent of the male rate. I do not happen to like it, but it is true.

The CHAIRMAN. Well, wait a minute. If it is biological, why does it change?

Mr. HOUSER. Why does it change? Well, obviously, there are reasons. I do not know. I am no doctor. I cannot tell you why it changes. I can observe that it does change. It has always been large, but it has gotten larger, until at least the very recent years. I do not know why.

The CHAIRMAN. Is it not true that there is a time in our history when actually on the average women died earlier than men?

Mr. HOUSER. I am sure that is true.

The CHAIRMAN. Why would that be?

Mr. HOUSER. I do not know.

The CHAIRMAN. Well, it cannot be just because they were women, or they cannot have died earlier in the 1850's and older in the 1950's.

Mr. HOUSER. We can speculate. Childbirth, various things. But it would be sheer speculation on my part. But it is an observed fact

that this differential exists long before environmental factors can have any effect, I mean, when it starts before birth and it occurs in the very first year of life, you have to say it is biological.

The CHAIRMAN. What would you say if I were to tell you that in some Third World countries today the average woman lives a shorter period of time than the average man? How do you answer that in biological terms?

Mr. HOUSER. Well, the only thing I can say is, we are insuring people in the United States and not in Third World countries.

The CHAIRMAN. I would contend that the difference is not biological but environmental, or conditioning, or whether you smoke, or whether you happen to be a lawyer as opposed to a housewife, or a variety of other factors, or else the tables would simply never change based upon changed circumstances.

Mr. HOUSER. I would have to disagree with you. I cannot point out why there is a difference. I do not have my hands on it. I think there is ample statistical evidence by medical researchers that if you eliminate all of the extraneous factors, whether they smoke or whether they do not, whether they are overweight or whether they are not, what their family history is, I think you would find that that same differential between male and female does exist. It is a real one. It is not an artificial one.

The CHAIRMAN. Senator Exon.

Senator EXON. Mr. Houser, let me ask you about some of the compromises that have been talked about. The chairman alluded earlier to a compromise that had been at least talked about, he indicated possibly agreed to last week, with regard to the elimination of one part of the bill. That had to do with making the bill retroactive in its application.

Could you state for the record how you as an insurance man felt about that, and is that at least one thing that should be done in your opinion if this bill eventually is passed by the Senate?

Mr. HOUSER. Well, that is a big question, and let me respond to it. The industry has not changed their philosophy on their separate pricing for women. When you use the words "sex discrimination" we are on the bad side. If you use the words "sex differentiation" you get a little bit more of the flavor of what the companies are doing.

Why did the industry have a previous position and why did they change? Does that mean that they were not holding to their principles? No, it does not mean that at all. The companies feel that differentiation in pricing based on sex is a very valid one, it is a very real one. It has always been a matter of principle.

Why then were we willing to accept the unisex approach for individual policies as an industry? The reason was that we felt we had a gun to our head. The retroactive thing was so threatening that we could not bargain in good faith. And it was under that pressure that the industry said, we will give away some of our principles that we believe strongly in, because we do not want to be shot dead.

There is a growing perception that the retroactivity picture is now perceived by at least some Members of Congress as something that has to go, and under that sort of a change I think there is a return to saying that we do not have to give away our principles. I

think this is the sense that the industry reversed itself and said, we are going to return to our principles, which says that cost-based pricing is fair and equitable and best for all concerned.

Furthermore, the change that we are talking about here is going to hurt women. I have heard statistics that say otherwise. I do not believe those other statistics. I think that the evidence is pretty clear and I think it can be demonstrated that this will have a detrimental financial impact on women.

We do accept that portion of the bill that provides equal benefits, equal pricing for employee benefit plans. That we have no problem with. We accept that. It is when you begin to expand it to other areas that we have troubles.

Senator EXON. Ms. Greenberger and Dr. Gray, would you care to respond to that? I would like to have your viewpoint.

Ms. GREENBERGER. Well, I would like to comment on the impression given that all of these rates are fine tuned and directed totally toward differential life expectancy rates and experiences. In fact, in appendix A of my testimony there was an advertisement by an insurance company comparing their rates for a particular life insurance plan with some of the other major life insurance companies and the rates that they charge for similar plans.

And when one reviews these rates, in fact there is enormous differential between the differences in rates by sex, ranging from 8 percent in some companies up to 67 percent differential by sex in other companies. Clearly, that is not mortality differences at work. Obviously, there is not biology at work that is making those kinds of dramatic changes.

And the other thing that is clear when those tables are reviewed is that there is such a major differential in the prices charged for the same policy by the different companies, some of which charging more to insure men—I am sorry, women—for life insurance than others are charging to insure men for life insurance, that there are many other factors involved in the way companies are setting the rates than biology or mortality tables.

And I would question why, in the pension area, if by the time women retire the tables show that they have approximately a 4-year life expectancy advantage over men, that they are disadvantaged by 6 to 9 years, if in fact those rates are driven by biology.

Ms. GRAY. I would like to agree with what Marcia said about the inability of the insurance companies really to support any notion that their figures are as closely cost based as they would like to pretend.

I would also like to comment just briefly on the issue of the impact on women. I was delighted that Mr. Bolin is such a firm supporter of Women's Equity Action League, since I happen to be president of that. On the other hand, it is poor women who will benefit from this bill. Poor women at the moment cannot afford, for example, individual health insurance. Disability costs are prohibitive for individual women. Many women who have low incomes are on discriminatory pension plans.

The so-called life insurance advantage, first of all, is largely illusory in many companies. Second, you have to remember that women are the beneficiaries of men's life insurance policies as well.

If we had a generally fairer price policy, it is not clear who is going to benefit. But in most cases women will benefit.

And I am very concerned that the insurance industry has suddenly become such great advocates for women and worried about the impact on us. We think we know what we are doing, even if they do not.

The CHAIRMAN. Senator Tribble?

Senator TRIBLE. We have just had a colloquy about the relative benefits and costs flowing from this legislation. I would like to translate that discussion into dollars and cents, if we might. Opponents of this bill charge that it would require women to subsidize men through extra premiums.

Specifically, gentlemen, what would be the total annual cost of increased life insurance premiums to women under a unisex law?

Mr. FILER. Mr. Chairman, with us is Mr. Minck, who is an actuary with the American Council of Life Insurance. To make sure we are accurate, I would refer that to him.

Mr. MINCK. Mr. Chairman, thank you. That question is one that I am not sure there is a simple answer to, Senator. You have a number of price factors that will be at work. First of all, if the bill were passed companies would have to produce new policy forms, develop new sets of rates, replace all of their existing contracts, educate all of their agents, get all of the material out to the field force. That cost would be passed on to every policyholder, both man and woman.

The second thing that is not clear in estimating the cost to women is what companies would you in fact be allowed to do with existing contracts. The bill provides, as drafted, that companies could increase premium rate for existing contracts for women if they got approval from the State regulatory bodies, and if it were absolutely necessary to carry out the purposes of the bill.

On the other hand companies are faced with our contracts that specify premiums. We do not know that we could get the authority to change them. Now, if we could get that authority and if those changes are made, the additional cost purely for women would be in the range of \$300 or \$400 million a year. But we do not know that that those changes can be made.

And the cost, the additional cost of replacing all of our additional contracts and putting in a whole new line of business, would be split between men and women, so I am not sure whether you want that included in the answer or not.

Senator TRIBLE. Yes, what would be those additional costs as well?

Mr. MINCK. I believe that the figures that we have been looking at would be something in excess of a billion dollars as a one-time cost for doing it, and that would be distributed between men and women.

Senator TRIBLE. Mr. Houser?

Mr. HOUSER. Just to respond a little more specifically, in our own company the discount we give to women for an ordinary life policy runs between 10 and 15 percent. One of the people said our industry uses 3-year setbacks. That went out years ago. That was a thing that was set by some State nonforfeiture value laws. That had

nothing to do with pricing. It is not typically used in our industry today.

My company has never used age setbacks. Our discount for an ordinary life policy is some 10 to 15 percent. It is a very real discount. For term policies it is substantially more than that. For term policies it can be in the nature of a 25- to 40-percent discount.

So when you talk about how much discount, it depends upon the type of plan. And obviously there are variations between companies, because we are in a competitive industry and we do not all price alike. I know of no company, however, that does not give a substantial discount to women. And when these things are put together, saying what the overall impact would be on women depends upon what your mix of coverages is.

It is clear that individual life insurance, our present system, benefits women, and abandoning it would hurt women. Let me illustrate that.

When I said that our liabilities would be increased by \$345 million, \$284 million of that is individual life insurance. The cost to increase group pension plan benefits is only \$56 million, because most group pension plans are sex-neutral already. That is not the big area of cost. It is individual life insurance, and that is one where women are undoubtedly going to be hurt by this legislation.

Senator TRIBLE. Gentlemen, is it possible to estimate the total annual cost or benefit to women considering all kinds of insurance?

Mr. FILER. I am not sure that we are qualified to do it. I understand later this morning, Mr. Chairman, we do have people from the Health Insurance Association and the property and casualty industry associations, and perhaps we could aggregate them through the morning.

Senator TRIBLE. All right, sir, we will do that.

Gentlemen, another objection that is sometimes made to this legislation is that it violates the spirit of the McCarran-Ferguson bill, which allows States the freedom to regulate insurance. Is that a viable argument against this kind of legislation in your view?

Mr. FILER. Well, I do believe it is a consideration that should be kept in mind. I do know there are certain State laws that would be inconsistent with this bill if passed, although the Congress obviously has the capacity to override the basic thrust of the McCarran-Ferguson Act in certain circumstances when warranted.

But I do think it should be taken into account as a precedent. I think so long as we do have a McCarran-Ferguson Act and we do have a 50-State regulatory system, it is in the interest of the public and in the interest of the industry that this State system be supported, that it be made to improve, and we do work at that.

But I would not suggest that that is one of the major problems with the bill, but it is one that I think is worth taking into account.

Senator TRIBLE. Thank you, Mr. Chairman.

The CHAIRMAN. Let me ask this to both—well, I can ask Mr. Houser and both of you can answer if you want. You have dwelt at some length on costs, and I think in the course of these hearings you have raised a legitimate issue about costs. If the bill were amended so that, one, it did not apply to completed contracts, contracts where all the premiums have been paid and no premiums are still being collected, and two, if the insurers were authorized by

law to blend the rates and benefits for contracts currently in the course of payment, then would your cost problem be alleviated?

Mr. HOUSER. Well, obviously if you got rid of the retroactivity and the topping up you would go a long, long ways toward relieving our cost problem, yes. That would take the gun away from our head.

The CHAIRMAN. What other cost would you have?

Mr. HOUSER. Well, when we talk about the cutover cost, obviously, that is something substantial, but this would not be fatal.

The CHAIRMAN. The cutover cost?

Mr. HOUSER. Well, we in effect would have to change everything we have been doing for the last x years.

The CHAIRMAN. You mean the internal administrative cost?

Mr. HOUSER. Yes. And there are other types of costs involved.

My biggest fear is that if we would go this route, which I feel is ill-advised, the net effect is that we would overcharge one section of the public in order to undercharge another section of the public. Competition is what has produced our pricing system. These steps for pricing differentials did not happen because somebody sat on a desk with his feet up on it and thought great thoughts. It came about because somebody recognized that in the marketplace we were overcharging for one section of the business.

Let me give you an example. We did not used to have smoker rates and nonsmoker rates. In recent years somebody wised up to the fact that the mortality rates were significantly better for nonsmokers. One company took the lead and reduced their price for nonsmoker policies. The other portion of the industry, as they began to see the nonsmokers drifting away from them to the other company, were forced by competition to follow the same approach.

And this is the way our sex classification, our risk classification system has grown up. Now, suppose we step in and say arbitrarily, it does not make any difference that women live longer than men or, that men die faster than women. This would make absolutely no difference if we pass a law that you have to equalize this all in pricing.

I think the real problem for the industry would be that you put an incentive to get around the law. And I am not talking about people being lawbreakers or anything else. If I told a department store that they had to average their low-price suits and high-price suits and sell them all at the average price, I can assure you there would be a lot of games played to get around that kind of a law. And I think the same situation prevails here.

I am more concerned with the market dislocation than I am the price tag if you get rid of the retroactivity. That is my perspective.

The CHAIRMAN. In terms of costs, if we did those two things that would alleviate the great bulk of the costs you face?

Mr. HOUSER. Yes.

The CHAIRMAN. Dr. Gray, I am curious, do you have any comments on that question?

Dr. GRAY. Well, it is certainly true that it would alleviate the costs and bring them down to the very minimal sort of administrative costs. What I would question is whether there are any tremendous costs in the first place.

The life insurance industry insists upon talking about increasing death benefits when there are several other ways of dealing with the life insurance problem. They also insist upon including in the estimates the cost of equalizing benefits on things which are already covered by title VII and should have been equalized years ago.

So yes, it is true, if the provisions were modified the costs would be even less, but the costs are really not that substantial at the moment.

The CHAIRMAN. Mr. Houser, again going back to your statement about the mortality tables, I take it if the mortality tables between men and women were again to close, as apparently they did some time after World War I or before World War II or whenever, if they came back to where there was a relatively small difference, you would adjust your rates accordingly?

Mr. HOUSER. Certainly.

The CHAIRMAN. Now tell me once more. I do not understand this. I do not understand how those mortality tables can change rather dramatically in a short period of time if the difference is biological.

Mr. HOUSER. Well, I do not think there is any immutable evidence that it cannot change, even if it is biological.

The CHAIRMAN. Well, apparently it does change.

Mr. HOUSER. Sure it changes, and I do not think that disproves the biological difference.

The CHAIRMAN. I do not think anybody is arguing there is no difference between men and women. I am curious why the mortality rates go up and down.

Mr. HOUSER. All we can observe is that if we insure 100 men and 100 women exactly the same in all characteristics, age and every other characteristic, the nonsmoking and everything, the female deaths are only going to be 60 percent of the male deaths.

Now, I am not a scientist. I cannot explain why. I can just observe that it happens.

The CHAIRMAN. That is today?

Mr. HOUSER. Yes.

The CHAIRMAN. But that apparently was not the situation 50 years ago.

Mr. HOUSER. There was a differential, but it was not that large.

The CHAIRMAN. That is what I am trying to get at; 50 years ago, you take the same characteristics, 20-year-old men and 20-year-old women that do not smoke, whatever, identical characteristics; the mortality rates apparently were quite close.

You go 50 years later, 20-year-old men and women, do not smoke, same characteristics; they have widened.

Mr. HOUSER. That is an observed fact. I cannot tell you why it has happened.

The CHAIRMAN. But assuming the premise of my question, that you take the two people, identical characteristics, does it not have to have widened for some reason other than biology?

Mr. HOUSER. Well, that would be one conclusion. I do not think it is justified by the facts. I do not think you can draw that conclusion.

The CHAIRMAN. What other conclusion can you draw?

Mr. HOUSER. Well, I would have to leave that to a medical doctor. I cannot answer that.

Mr. FILER. Do you want to see if an actuary might throw some light on that?

The CHAIRMAN. Sure.

Mr. MINCK. It would be the first time an actuary ever has, I expect, if that were to happen.

The CHAIRMAN. No, they throw other things.

Mr. MINCK. Indeed, Senator, I think that the trend in mortality rates was fairly gradual, but fairly steady over a period—if you look at the beginning of the 50-year period and at the end of it, you will find differences that, if you summarize it into life expectancies, are several years worth.

But it was over a long period that you can observe the changes. Some of it was because of changes in public health, some of it was improved care during childbirth. A number of other factors were going on.

And I think that the actuaries I know that have looked at it would say that what was happening was that some of the factors that were masking the differences arising from biology were addressed and taken care of.

The CHAIRMAN. Say that again?

Mr. MINCK. The biological differences produced differences in mortality rates, but there were other things working at the turn of the century that would serve to mask these differences. For example, high mortality rates were experienced by women in connection with childbirth, and you will find a lot of that extra mortality currently being experienced in Third World countries, now. Relatively high mortality rates for women giving birth to children will tend to mask the fact that there is a mortality difference the other way.

Dr. GRAY. Mr. Chairman, could I comment on that?

The CHAIRMAN. Yes.

Dr. GRAY. I think some of the masking that Mr. Minck referred to has taken place. The difference in life expectancy 60 years ago was a year; now it is 7 years. Part of this is due to the fact that there is better care at childbirth than there was 60 years ago, not all of it but part of it.

On the other hand, we have no way of knowing that it is not the case that other improvements of a different sort in the next 50 years will reverse it and that 50 years from now, when the people who are now entering the work force are 70 years old, that it will not be back the other way and the difference in life expectancy will again be a year instead of 7 years, or maybe it will even go the other way.

For example, if we made such dramatic changes in the way we dealt with heart attacks as we have in the way we deal with childbirth, you might get a reversal in the differential mortality. So I think it is true. We do not know why. But I think you are absolutely correct that a rapid change of a difference of 6 years over a 60-year period does not seem to be a genetic change. Genetic changes do not happen that rapidly.

Mr. HOUSER. I would say that is a conclusion, not a fact. The expectation of life at birth in the United States—these are U.S. tables—the sex differential back in 1900, a long time ago, was 2

years. In 1940 that differential had widened to 4.4 years. By 1980 it had further widened to 7.7 years. And that is a fact.

Again, I cannot explain it, but it has gone from 2 to 4.4 to 7.7, and may still be widening, between 1900, 1940, and 1980. That is the fact. That is what we have to reflect in our pricing of our product.

The CHAIRMAN. And the conclusion it seems to me you immutably reach is therefore it has got to be based on some reason other than man and woman, or those years would not change, the difference would not change.

Mr. HOUSER. Well, I think that is a conclusion.

Mr. GLASSER. Mr. Chairman, may I comment?

The CHAIRMAN. Yes.

Mr. GLASSER. A little-known fact is that—I used to teach statistics and probability before I came to work for the ACLU, and I have never before had a chance to use it in the context of my current employment. But what is a conclusion and not a fact is the supposition of causation in the correlations here.

And the people who are doing the concluding are those from the insurance industry. Sex is a proxy for other characteristics. There is no such thing as life expectancy for a given individual. You are dealing with an average over a large group, and averages can be very misleading. I once heard a statistician describe a man who had one foot on a hot stove and the other foot on a cake of dry ice as on the average comfortable.

Averages are funny things. All you are doing with life expectancy tables is grouping people according to a certain characteristic and observing that the average person who shares that characteristic has a certain observable life span that is more or less than the average person who shares another characteristic. It says nothing at all about the overwhelming number of individuals within that group who may share the characteristics of the group but whose actual lifespan diverges substantially from the average. And it says nothing at all about causation.

Statistical analysis has nothing to do with causation. Therefore you are quite right in properly inferring that if a given result—for example, the average lifespan of women—is claimed to be biological caused, and you know that the biology is not changing and that nonetheless the lifespan keeps changing relatively rapidly, the one safe assumption is that whatever is causing it is not the biology.

Women in Third World countries are not biologically different than women here. They may in fact have different lifespans, on the average, but it is ridiculous to assume that the cause is biology. In fact, the search for causation at all in statistical analysis is the first thing you learn not to do, and that is the big mistake that is being made here. The dogged defense by the insurance industry of the biological characteristics as a justification for maintaining this kind of discrimination is without foundation.

It is a defense which is general, I think, from a concern about costs and from a fear that the costs will be larger than we think. That is the subject that ought to be debated.

The CHAIRMAN. Mr. Houser, and then I will move on to Senator Exon.

Mr. HOUSER. I hate to disagree with a statistician, but I am going to. I have an actuarial background of my own, so I am willing to stand up and argue.

In our business, we do not necessarily know cause and effect relationships. If you tell us that the only thing that we can reflect in our pricing is cause and effect relationships, I would submit that there are very few things that we could use in our pricing.

I cannot absolutely prove that age has a cause and effect relationship on mortality rates. I can observe that old people tend to die faster than young people. I cannot prove that there is a cause and effect relationship based on age there. So I simply have to say that in pricing our product, by the very nature of it we have to deal with the facts. We do not deal with suppositions as to cause and effect. We have to deal with the facts.

It is a fact that there is a substantial difference between male and female mortality. It is a fact that when you wipe out all of the extraneous factors that you can identify—weight, nonsmoking, family history, all of those—there still is a large observable difference.

We have no recourse except to reflect that in our pricing.

The CHAIRMAN. Senator Exon.

Senator EXON. Mr. Chairman, I know we have other panels and so I will not drag this out.

I really appreciate the excellent testimony we have had on both sides of this issue. Let me get out of the life field for a moment and get into the casualty field. As I understand it, and I will stand corrected if I am wrong, if this bill would become law it would also apply to equal rates for casualty.

Let us take automobiles, for example. Generally speaking, not being in the insurance line, I understand women pay cheaper rates for automobile insurance than men do. My wife and I, who have raised three children, all gone and married and have children of their own now, but we had one boy and two girls.

Now, I have never paid any insurance premiums on my children since they left home, but I had to pay the casualty rates during those terrible teenage years, and I know that my sons' rates were a lot higher than that for my two girls, and justifiably so, at least in my case.

I did not like it, but it was a fact of life.

The CHAIRMAN. That, Jim, sounds more like individuality than a sexual difference.

Senator EXON. Well, I do not know.

The CHAIRMAN. It sounds like the boy took after you.

Senator EXON. Yes, I think he did.

In fact, I will say that my wife has only had one minor accident in her whole life and I have had two or three that might be considered of a serious nature.

How do we justify this? Obviously men, because they are not as good drivers or women do not drive as much, or for some reason men simply are not—are they not more dangerous on the road than women? And if that is true, is it not only fair that the men be charged a higher premium, including my son that I had to pay for?

Ms. GREENBERGER. Senator Exon, I think you have brought up a very good point. In fact, it may well be that women throughout

their driving years may have safer records. There may be a number of women like your wife. Yet, beyond the age of 25 she is not getting the full benefit of her safety record in her rates.

There is a presumption that all young male drivers are less safe drivers than all young women drivers. That presumption ends at age 25, and in fact there have been a number of studies and testimony submitted by others about the fact that a lot of the difference may have to do, as you point out, with frequency of driving and number of miles driven. And it turns out that men drive more miles than do women, and it may not be so surprising that those who drive more miles wind up in more accidents than those who do not.

And if safety records and miles driven were substituted for presumptions on the basis of sex, you might well find more women at every age getting rates that better reflect their actual driving records than they do at the present time.

Mr. FILER. Senator, if I might just add a comment. While we are not here representing the casualty and property industry—another panel will be doing that later this morning—my understanding is that that last comment is really not totally accurate, that when you take out miles driven you still have at the younger ages a very significant differential in terms of frequency and severity of accidents, and the rates do tend to reflect that.

I hesitate to get into this too deeply for fear of misleading you. We do have people who are thoroughly experienced in these lines of business coming later this morning.

Dr. GRAY. Senator Exon, unfortunately, since there are fewer of us, we have to know about casualty insurance as well. It is another area in which there is a great deal of dispute about the existing statistics.

However, Bob Hunter, who is an actuary who has testified, did do some calculations on the issue of miles driven, and since there always is some dispute about who is trying to prove what, the General Accounting Office did look over his calculations that he made and agreed that if you substituted miles driven for gender as a risk classification factor in automobile insurance for younger drivers, there would be very little difference. But for drivers over 25, women would actually pay about 25 percent less.

So the net effect would be a benefit to women in automobile insurance, just as in many other kinds of insurance. That is a very misunderstood part of this whole bill, because of the obscure nature of the figures that have been thrown around by the insurance industry.

The CHAIRMAN. I might just quote that part of the General Accounting Office letter that you are reading. It is a letter of April 18 to Congressman Florio in which they say, talking about Mr. Hunter:

We find the methodology employed in his calculations provides a reasonable basis for Mr. Hunter's conclusions, and that the calculations are essentially correct.

Senator EXON. Mr. Chairman, my time is up. I assume we will be covering some of these things later.

The CHAIRMAN. Thank you.

Senator Tribble.

Senator TRIBLE. Thank you, Mr. Chairman.

Gentlemen, where there are observable differences in human performance and therefore differences of risk, it seems to me quite reasonable to take those into account. The fact that women live longer, whether for biological or other reasons, I think, is a reasonable factor in terms of determining the conditions of insurance.

However, the argument has been raised quite eloquently, I think, by Mr. Glasser, that perhaps there is an overriding national requirement, and that is the pursuit of equity and equality, and perhaps there is just a substantial national price that has to be paid for that in term of life insurance.

You have said that the price would be \$1 billion plus. Perhaps that is the cost of equality. Perhaps that is a price that has to be borne by women as well as men. My question is this. There are certain classifications that are identified as suspect classifications in constitutional analysis. Race, religion, sex would be three of those. Apparently there are observable differences in the performance of people in terms of race and religion such that people that provide insurance could provide different conditions for that insurance coverage, and yet we do not do that. Why should we not do it in terms of race and religion and yet argue for a different kind of policy on the basis of sex?

Mr. HOUSER. Well, I think you raised a very good question. First of all, you presented the principle of equality. I would also put on the same level the principle of equity or fairness, and I think you have sensed that there is a tension between these two principles, the one of equality, which says we do not care if it is unfair, and the one of fairness, which says that it is better to be equitable and fair than it is to be equal.

So, I think you put your hands on a very important question as to which dominates. Now, as to these—why we do not rate for some things and why we rate for others is also a legitimate question. I think there is strong evidence—I indicated it earlier—that the mortality differences between some of these things that you mention, religious groups, racial groups, and so on, can be explained completely or significantly on other grounds than religion or race.

In other words, when you get likes and compare with likes, you get people in the same economic class, in the same family lifestyle, etc. You will find that the racial difference is not very important for mortality—it gets wiped out in the process.

The CHAIRMAN. The racial difference gets what?

Mr. HOUSER. Wiped out. In other words, if you take two people that are alike in every respect except race, you will find very little difference in mortality, but if you find two people that are alike in every respect except sex, there will still be a wide difference in mortality.

The CHAIRMAN. Excuse me, Paul. Go ahead.

Senator TRIBLE. Would anyone else care to respond to that?

Dr. GRAY. Yes. That is not true.

Senator TRIBLE. Let me get—I framed the question so that the presumption is in favor of the ladies on this side of the table, so let me give the gentlemen on the other side an opportunity to respond.

Mr. FILER. I was simply going to buttress what Mr. Houser said. My understanding is that the differences are narrowing, and are of

inconsequential significance, and that we would not find any reason to use this factor in rating, and I think it is important to recognize that we do not have any presumption or vested interest or desire to rate people improperly. It is very much in our interest and very much in the interest of our customers and very much in our interest as a competitor in a very competitive industry that we be as accurate as we can be in pricing our product. We have no incentive, to take into account irrelevancies or to be discriminating in these factors in any fashion against either men or women.

So, that it seems to me that all of the argument about statistics, and in good faith you can argue both sides, ignores the fact that there is no incentive for the insurance industry to do other than try to be as accurate as it can be, because this is a very competitive business.

Senator TRIBLE. Dr. Gray, I did not mean to cut you off. I just wanted them to complete that line of response.

Dr. GRAY. I think that my statement summarizes it fairly well. If you do control for other factors, like economic status, occupational status, smoking habits, drinking habits, a number of other things, there is very little difference left in the life expectancy between men and women. There is not a substantial difference left.

It is true that if you control for economic level when considering race differences there is a lesser difference in life expectancy than there would be if you do not control for economic differences, but as a matter of fact the economic status of people is not something that is taken into account in setting life insurance rates, so if you simply look at the group of blacks and the group of whites, there is a substantial difference in life expectancy based on race, not because of, but along with the substantial difference in economic status.

Now, that is very unfortunate, and of course we are working to remedy it, but the point is that it has not improved a lot in the past few years, and it is unlikely to in the immediate future, and therefore it exists and there is a difference in life expectancy on the basis of race, and we simply do not take it into account because it is not socially acceptable to do so.

Similarly, with respect to religion, there is a very substantial difference in life expectancy, for example, between Mormons and non-Mormons. We do not take that into account. We treat sex differently, and if the life insurance industry has no vested interest in how things are rated, then I wish they would simply drop their opposition to the bill. We do not think they should have a vested interest, or that they should be using our premiums to advance this position, but they seem to do so nonetheless.

Mr. FILER. Senator, if I could just add one word, and that is that it is often ascribed to us that the reason we do not use race and religion is that it is unacceptable. Well, I do not think those who are not of this business can ascribe to us a motive when we in our judgment come to the conclusion that there are other factors, and that we would not, if there were no law in this land, use those classifications for rating purposes, and I think that is a factor we keep asserting and will keep asserting.

Senator TRIBLE. Mr. Bolin.

Mr. BOLIN. I would just like to pass on to this committee that in the 20 years I have been in this business, that women have been paying less for insurance, and we have never received the first letter from them complaining about that. So, I do think that we would have to consider their wishes along with this.

Thank you.

Senator TRIBLE. Mr. Chairman, may I ask just one more question?

The CHAIRMAN. Surely.

Senator TRIBLE. Gentlemen, what percentage of insurance, of the insurance market, the life insurance market is employer provided?

Mr. HOUSER. What do you mean, pension plans, or insurance? Are you talking about life and health insurance?

Senator TRIBLE. Of the kinds of insurance coverage that you provide, this panel.

Mr. HOUSER. Health insurance would be overwhelmingly group insurance. Pension plans would be overwhelmingly group insurance. Life insurance, I cannot answer that without more information.

Mr. MINCK. We can certainly provide exact figures for the record. In terms of numbers insured, we insure somewhere close to 60 million people for group coverage that is employer provided, and somewhere close to over 130 million people individually. So it is a very substantial part of the population.

The CHAIRMAN. Well, I think that is a figure you and Mr. Bolin could provide for us almost to a gnat's eye, could you not, the difference between employer and nonemployer provided life insurance?

Mr. MINCK. Yes.

[The information referred to follows:]

AMERICAN COUNCIL OF LIFE INSURANCE,
Washington, D.C. June 2, 1983.

Hon. BOB PACKWOOD,
Chairman, Senate Commerce, Science and Transportation Committee,
Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: At the hearing on the "Fair Insurance Practices Act," S. 372, on May 19, a question was asked as to what percentage of life insurance is employer-provided group life insurance. As of the end of 1981, there were 204 million individual life insurance policies and 123 million group certificates in force in the United States. Some persons may have more than one policy or certificate and others may be covered as dependents under someone else's policy or certificate. We estimate that about 127 million have group life insurance.

Sincerely yours,

RICHARD V. MINCK,
Executive Vice President.

Senator TRIBLE. The suggestion, of course, is that individual lines of insurance be exempted from this legislation, and I think that data would be quite helpful to us. Thank you, Mr. Chairman.

The CHAIRMAN. Just a couple of other questions, Mr. Bolin. You indicated you have never had any letter from any women complaining about favorable treatment they get at the moment.

Mr. BOLIN. That is correct.

The CHAIRMAN. Do you think that all of the women's organizations that have testified in favor of this bill are out of touch with their membership, or that they are not representative of women?

Mr. BOLIN. I read where one of the organizations, Senator, represents 200,000 members, and when we consider that there are probably more than 100 million females in this country, I do not think that it would be possible for a group of 200,000 to represent the views accurately necessarily of the 100 million females, but I do rely on the fact that we have not had a groundswell of feeling for this bill among our policyholders.

The CHAIRMAN. Well, let me read you just a partial list of the women's organizations that support it: The Women's Equity Action League; the National Organization for Women; the National Federation of Business and Professional Women's Clubs; the National Women's Political Caucus; the American Association of University Women, and I can go on and on. So, let me ask my question again. Do you think—because they all represent women. Do you think that the leaders of these groups who are testifying here are out of touch with their memberships? Or in the alternative, that all of their memberships are simply not representative of women?

Mr. BOLIN. To answer your question, Senator, I would say that many of these spokesmen for those groups are giving the views of the people that they represent, but I do not believe that that is a 100-percent view of the people, because some of those groups that you have just listed there—I have a sister, for example, in the business and professional women's group, and I know for a fact that she opposes this.

The CHAIRMAN. I am not going to get into that debate as to whether a group that speaks for a group speaks for 100 percent of the group. My hunch is that the life insurance industry does not speak for all of the companies, based upon my experience.

Mr. BOLIN. I do not think you could ever get 100 percent unanimity in anything.

The CHAIRMAN. I want to make sure, and I will address this lastly to Mr. Houser again, the reason that you do not discriminate in rates between whites and blacks, and according to the statistical abstract of the United States, their life expectancy is 6 years different, black male and white male, is that you have other, better, relevant factors upon which to classify blacks other than black and white?

Mr. HOUSER. That is a primary reason. Yes, sir.

The CHAIRMAN. Now, despite the fact, and I am looking at the 10-year differences in the statistical abstract between men and women from 1920 onward to the difference in life expectancy at birth, 1920, 1 year; 1930, 3.5; 1940, 4.4; 1950, 5.5; 1960, 6.5; 1970, 7.7; 1979—they do not have 1980—1979, 7.5. It has dropped a bit.

What you were saying is that while you can find other factors for blacks, other factors for religion, there is no other factor or collection of factors as significant as the difference between men and women, and that is why you keep using the sex discrimination tables?

Mr. HOUSER. That is correct, and I would support what Mr. Filer said. If you start out on the presumption we are trying to get at women and knock them down. You are wrong. We do not start with that presumption. We are trying to do the best job we can for everyone. I do not know of any other factors that could substitute for sex in predicting mortality.

The CHAIRMAN. Thank you.

Any other questions?

[No response.]

The CHAIRMAN. Thank you very much for a most informative panel.

Next we will take Ralph Eckert, Margaret Dunkle, and Betsy Morrison.

Mr. Eckert, go right ahead.

STATEMENTS OF RALPH J. ECKERT, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, BENEFIT TRUST LIFE INSURANCE CO., REPRESENTING THE HEALTH INSURANCE ASSOCIATION OF AMERICA, ACCOMPANIED BY LEO R. FUTIA, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, GUARDIAN LIFE INSURANCE CO.; MARGARET DUNKLE, CODIRECTOR, EQUALITY CENTER; AND BETSY MORRISON, COMMISSIONER, MARYLAND COMMISSION FOR WOMEN, NATIONAL ASSOCIATION OF COMMISSIONS FOR WOMEN, AND VICE PRESIDENT AND MANAGER OF FINANCIAL SERVICES FOR HERGET AND CO., INC.

Mr. ECKERT. Good morning, Mr. Chairman.

I am Ralph Eckert, chairman and chief executive officer of the Benefit Trust Life Insurance Co. of Chicago, Ill. With me this morning is Mr. Leo Futia, chairman of the Guardian Life Insurance Co. of New York City.

The CHAIRMAN. Could I ask those who are conversing to go out? We cannot hear up here. I would ask the officer to close the door and usher the people out as soon as possible.

Excuse me, Mr. Eckert. Pull that microphone up close so those behind you can hear you.

Mr. ECKERT. We represent the Health Insurance Association of America, a trade association for the health and disability insurance business. Our two companies have specialized for 100 years in health and disability business both in the individual and group markets. Combined, Leo and I have 70 years' experience with our companies and with the products and markets mentioned. Mr. Futia also has prepared a written statement which we would like included as part of the record of this hearing. It will be particularly valuable because it highlights the bill's impact on the disability insurance business.

The CHAIRMAN. All of your statements will be in the record in full.

Mr. ECKERT. We are here today because we are deeply concerned about the impact that S. 372 as currently drafted will have on the health insurance business and the American public. We are concerned that although S. 372 seeks to make health insurance more available and more affordable for women, we know that in actuality it will become less available and more expensive for almost everyone.

The critical point that the proponents fail to appreciate is that unisex rating for health and disability insurance is fundamentally incompatible with the principles of insurance operating in a free and competitive marketplace.

Approximately 36 million persons rely on individual health insurance. This segment of the population also tends to be in the lower income brackets. It includes unemployed workers, part-time workers, students, and other persons who cannot otherwise obtain group insurance at all. Somewhere between 60 and 65 percent of all of these individual policies are sold to women.

To preserve this product for them, we must be able to consider sex in the premium rating process. This is because of the large differences in health insurance claims generated by men and women. For example, decades of claims experience show that women between the ages of 20 and 40 generate 50 percent higher hospital and physicians' bills, and about 100 percent higher disability income claims than do men. This is true even after excluding costs for pregnancy and normal deliveries.

Forcing companies to ignore these huge claim differences in setting premiums will only lead to financial loss due to antiselection, create a major disincentive to sell policies to women or cause companies to withdraw these products from the market altogether. Similarly, mandating maternity coverage in individual health insurance will also contribute to the nonavailability of individual health insurance for persons in their childbearing years, as was proven in New York State.

In the group insurance area, we must be allowed to experience rate by group. To do otherwise would mean that one employer would be expected to subsidize another employer, that one union group would be expected to subsidize another union group. Rather than do this, groups can be expected to either self-insure their plans or drop their insurance coverage altogether. For small groups, this can be expensive and very risky.

Mr. Chairman, health insurance today is already facing a financial crisis. Last Sunday's front page headline of the Chicago Sun-Times reads, "Cash Crisis Hits Insurance Firms" and the article's first sentence this last Sunday reads, "One in seven insurance companies in Illinois show signs of financial trouble, double the rate of three years ago, prompting the State's top regulator to say, 'The overall industry financial picture has never been worse.'"

As chairman of the Illinois Guarantee Fund for 2 years, I have worked for 2 years with the Illinois Insurance Department, and I can tell you that health insurance losses have greatly contributed to those insolvencies. For the last 4 years, the private insurance industry has lost money selling individual health insurance. For the last 3 years, my company has lost money in this area.

To superimpose S. 372 on top of this fragile health insurance business would be disastrous, especially the retroactive features of the bill.

Mr. Chairman, in conclusion, equal availability of health insurance for men and women with equal benefits and conditions regardless of sex are goals that the health insurance companies and proponents of S. 372 both share. Our full statement includes a list of amendments to S. 372 which we believe will achieve most of the stated goals of the proponents without destroying sound insurance practices and impairing the sound operation and financial solvency of the health and disability insurance business.

Thank you.

[The statement follows.]

STATEMENT OF LEO R. FUTIA, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, GUARDIAN LIFE INSURANCE COMPANY OF AMERICA

I am Leo R. Futia, Chairman and Chief Executive Officer of the Guardian Life Insurance Company of America, located in New York City. I have joined Mr. Eckert today on behalf of the member companies of the Health Insurance Association of America.

My company is one of the 20 leading producers of individual disability income insurance for personal and business use in the United States. Disability insurance replaces lost income when the insured is disabled from sickness or injury and cannot work. This type of insurance is available to men and women for personal and business needs under identical benefit plans, but at different premium rates.

Over 21 million Americans, or about 20 percent of the total work force, are insured under individual disability contracts. Most of these policies are written by the member companies of the Association I am representing today.

I speak with special concern for disability insurance since it is volatile in its experience, with wide swings between profit and loss. It, more than any other type of health insurance, requires prudent management and careful ratemaking if companies are to remain competitive and solvent.

Ratemaking has three basic considerations. Rates must be reasonable so that the insured receives a fair benefit for the premiums paid. Rates must be adequate to assure company solvency and its ability to provide the benefits promised. And rates must be equitable so that those who are more likely to become disabled pay a higher premium than those who are not.

The serious fault of S. 372 is that it violates these principles of reasonable, adequate, and equitable rates in its attempt to legislate away the reality that sex is a significant factor affecting the cost of health insurance. Female claim costs for disability insurance are consistently higher than those of men.

Claim cost means the net cost of each unit of benefit before expense and profit margins are added. The net cost is generally determined from available or reasonably predictable claims experience for the type of coverage to be provided.

Rates are computed on the basis of net cost for various classifications of insureds. Since no one can predict with accuracy which individual will be disabled or when, insurers group individuals according to relevant and common characteristics. The theory of large numbers assumes that a certain percentage of individuals within the same class will become disabled over time.

Disability insurers most commonly classify insureds for premium purposes according to occupation, age, and sex. These are statistically valid criteria. They are not proxies for some other measures of potential disability. It is fact that the possibility of becoming disabled increases according to occupational hazard, at older ages, and by the sex of the insured.

When men and women are grouped properly in the same occupational class, claim-cost differences result from age and sex, and not occupation. Claim costs for men and women both generally increase as they grow older. But the claim costs for women are generally higher than those for men.

Female claim costs by age range above those of males of the same occupational class and at the same age by an average rate of 43 percent during the twenties, 122 percent during the thirties, 90 percent during the forties, and 31 percent during the fifties. After age 60, female costs average about 2 percent lower than those of men. These differences can only be explained on the basis of sex.

Female claim costs do not include maternity claims, since individual disability policies do not usually cover normal pregnancy. If maternity costs were included, these averages would increase sharply in the child-bearing years.

These differentials have been known since the mid-1950s. The most thorough study of them was published in 1976 by the New York State Insurance Department based on the experience of 21 companies for the years 1968 through 1973.

Less detailed studies since that time, including the most recent intercompany study conducted by the Society of Actuaries for 1978 and 1979 experience, continue to exhibit similar differentials.

Since 1978, insurance regulation in New York State has required disability insurers to take sex-related cost differences into account in making rates unless companies can satisfy the superintendent that unisex ratings are not inequitable for the coverage provided.

Three years earlier in 1975, New York State law and insurance regulation took effect to prohibit discrimination because of sex or marital status in the availability

of insurance. However, the insurance department has concluded that sex cost differentials must be considered if premium rates are to be adequate and equitable.

Sex-based rating of disability insurance is not unfairly discriminatory. It is a rational and proven method of pricing which reflects the expected experience for each class of insured as derived from the commonality of occupation, age, and gender.

Each person, male or female, is charged a premium that assesses fairly his or her exposure to loss. Each claimant receives a fair benefit in relation to the premium he or she has paid. The company receives adequate premiums from each properly rated person to deliver the future benefits it has promised under the policy.

We think it unwise and unjustified for the Federal government to enact a law that would prohibit the use of sex as a criterion for insurance premiums where the facts of its effects can be supported from actual experience.

If S. 372 were to become law, there will be severe dislocation in the marketplace for years to come. Its mandate will disrupt the pricing mechanism, reduce the availability of insurance for women, increase litigation, and seriously burden the insurance departments of all states.

Unisex rating will require that actuaries average known or anticipated claim costs for males and females in relation to the mix of sexes expected within a particular rating class. In terms of individual disability insurance, this means the almost impossible task of predicting with accuracy in advance how many women will purchase a specific policy form.

In all instances, men will be subsidizing women. Males will pay more than equity would reasonably indicate for disability insurance and women, who are more likely to become disabled at all ages under 60, will pay less than known experience would require.

The size of the male subsidy will depend entirely upon the sexual mix of the rating class. If there are few women insured under a policy form, the male subsidy will be small and the premiums of the entire rating class will be low. If there are more women than men insured under a policy form, the male subsidy will be large and the premiums of the entire class will be high.

If fewer women than expected buy a policy form, the benefits will be overpriced. Insureds who have not had claims—in large proportion, males whose claim costs are lower—will gravitate to those companies where the benefit return may be more reasonable at a lower premium.

If more women than expected buy a policy form, the benefits will be underpriced. This will lead either to premium rate increases for the entire class or insolvency of the policy form, with the inevitable shift of low risk insured to companies with lower premiums.

This replacement phenomenon is called adverse selection. The poor risks, who are paying less than their fair share of premiums, will drive out the good risks, who are subsidizing the losses. To avoid adverse selection, insurers will try to insure as many men as possible within a rating class.

Since the ability to price into the future with reasonable accuracy may prove impossible for individual disability insurers, companies will tend to narrow their portfolios, limiting benefit selection and the periods of time over which they will guarantee premiums.

Defensive pricing and target marketing can only work to the detriment of both sexes, but with particular economic cruelty to women, restricting their access to individual insurance and reducing the coverages available to them.

The retroactive application of S. 372 will require companies to re-rate or change benefits of all existing contracts. Most individual disability policies provide guarantees of benefit amounts and, in many cases, guarantees of premium rates which the company may not modify unilaterally.

We will violate the equity inherent in existing pricing structures to provide benefits to women at premiums lower than we contemplated at the time we issued the policies. If we increase benefits for women without raising their premiums, we will discriminate unfairly against men who will be asked to subsidize losses in excess of their share of the original pricing.

Companies will be faced with providing benefits for which they have not secured adequate funding on the basis of past pricing assumptions and past premium earnings. The drain on capital and operating income may push many small companies into insolvency.

Retroactivity raises serious questions about contract impairment which will expose companies to extended and expensive litigation in equity until the courts rule on the company actions to redistribute premium changes and benefits.

Every revised policy form, including revised benefit patterns, and every revised rate table in every company's current and past portfolio will have to be filed with the insurance department in every state in which the company does business. The insurance laws of all jurisdictions require such filing. It is arguable whether companies could even renew existing policies, let alone sell new business, until they have obtained approval of their filings.

Forms and rates may not be used in New York State until the insurance department has given formal written approval. Most other states permit insurers to deem forms and rates approved if they have been on file without insurance department objection for a period of 30 or 60 days. Most companies exercise the deemer with caution and prefer formal approval of the insurance department before using policy forms and rates.

We estimate that the filing of a single policy form and its rate tables, with supporting documentation, takes six months until we have secured approval in all states and the District of Columbia. Consider the number of insurance companies now doing business in all lines of insurance across these United States. Consider then exactly what S. 372 will require of them and the insurance department which regulate their activities.

There is not an insurance department in any state that is staffed or funded to handle what this bill would require. This bill will destroy the state regulatory mechanism, even if the law is confined to future issues of insurance.

If there is a civil right at issue here, it is that both sexes are entitled to equal access to insurance at a cost which reflects each person's fair share of claim costs based on relevant and statistically valid criteria. This legislation does not secure that right and it does not further the cause of women.

S. 372 disregards the entire concept of equity that underlies the risk sharing principles of insurance. The bill is conceptually flawed and impractical.

We cannot support S. 372 as presently drafted.

The CHAIRMAN. Thank you.

Ms. Dunkle.

Ms. DUNKLE. Thank you, Mr. Chairman and members of the committee. My name is Margaret Dunkle. I am testifying on behalf of the Equality Center and the National Women's Health Network.

I would like to summarize some of the major points of my testimony. I will focus on one of the many important provisions in the Fair Insurance Practices Act—sex discrimination in health insurance. I will emphasize the often massive discrimination on the basis of sex and pregnancy in the group health insurance policies which cover millions of American women.

Maternity care is the most expensive health charge that many women and many families ever have. The average cost of a normal delivery is \$2,300, and the cost of a delivery by cesarean section is over \$3,500.

I will not dwell on the issue of the basic equity and fairness of providing the same benefits for medical conditions related to pregnancy as for other conditions. Congress already spoke forcefully on this issue in 1978, when it amended title VII of the Civil Rights Act of 1964 to say that pregnancy discrimination in fringe benefit plans constitutes unlawful sex discrimination.

Rather, I will focus on two specific areas where maternity discrimination continues. First, health insurance policies available to employees of small businesses not covered by title VII, and second, health insurance policies commonly available to college students.

Health insurance is one of the most common fringe benefits of employees. Almost three-quarters of all full-time workers enjoy this benefit.

As a small business owner myself, I undertook a consumer study of health insurance policies I could buy for my employees in 1981. I

found that many of these policies discriminated on the basis of pregnancy and sex.

Most people do not realize that millions of employees in this country are not protected by title VII. Title VII—which prohibits employers from discriminating on the basis of sex, race, religion, or national origin, the same bases as in this bill—applies only to employers with 15 or more employees. In all, an estimated 15.5 million employed Americans, or 20 percent of the 75 million people in the work force, are not covered by title VII. Over 6.5 million women are not protected by title VII.

Even if you reduce this figure to take into account employers who do not provide any health insurance at all, or who already provide nondiscriminatory health insurance, the numbers are still awesome. An estimated 1.5 million to 2 million working women are covered by health insurance policies that provide lesser coverage for pregnancy than for other conditions. The number is much higher if you count discriminatory pregnancy benefits to the wives of men working in these small businesses.

Let me give you a couple of examples of the types of discrimination that we found. One company would not offer any pregnancy benefits to groups with fewer than 11 employees. Another company limited coverage for normal pregnancy to a \$250 obstetrical fee, but provided much more extensive coverage for other conditions. Under this policy, a normal pregnancy costing \$3,000 would cost the woman \$2,750 in out of pocket expenses. Care for another condition costing \$3,000 would cost only \$480 in out of pocket expenses. That is a difference of close to \$2,300.

I recently completed a study of sex equity in student health services. One aspect of this was an analysis of student health insurance policies for sex discrimination. We reviewed the policies available in 30 colleges and universities across the country in 1980-81. Almost all colleges, 96 percent, to make health insurance benefits available to their students.

Many college students need pregnancy benefits. Researchers estimate that 5 to 10 percent of all female college students become pregnant each year. Ten years after the passage of title IX, which prohibits sex discrimination in education, fully 90 percent of colleges offer their students sex discriminatory health insurance. Nine out of ten colleges provided either no health insurance coverage for pregnancy or lesser coverage for pregnancy than for other temporary disabilities.

One college in four excluded pregnancy altogether from insurance coverage, while covering other temporary disabilities. Even in an area where there has been a Federal statute, title IX, on the books for 10 years, pregnancy discrimination continues to be the norm. The rate of change has been painfully slow. A college student who had a child the year title IX became law, 1972, could be a great-great-grandmother before her descendents had a 50-50 chance of having their student health insurance policies treat pregnancy like other conditions.

Let me give a couple of examples.

The CHAIRMAN. I am going to have to ask you to draw to a close. I am holding the other witnesses very tight to 5 minutes.

Ms. DUNKLE. One college covered expenses for illnesses up to \$15,000, but provided no pregnancy coverage whatsoever. Another had a \$2,000 limit on expenses for illnesses, but \$300 limit for normal pregnancy.

In summary, these examples and the problems they cause for millions of American women support the need for the passage of the Fair Insurance Practices Act.

Thank you.

[The statement follows.]

STATEMENT OF MARGARET C. DUNKLE, EQUALITY CENTER

My name is Margret Dunkle. I am Co-Director of The Equality Center, a nonprofit organization to advance human and civil rights. I am testifying on behalf of both The Equality Center and The National Women's Health Network, a national nonprofit organization to improve health for all women.¹

There are many important provisions and implications of S. 372, the Fair Insurance Practices Act. My testimony focuses on one specific aspect of this bill—sex discrimination in health insurance, with emphasis on the extent to which the group health insurance policies which cover millions of American women provide less coverage for pregnancy than for other temporary physical disabilities.

Although maternity care is the most expensive health care charge that many women ever have, a large number of health insurance policies do not provide the same coverage and benefits for pregnancy as for other conditions. According to the Health Insurance Association of America, the average cost of a normal delivery in 1982 was \$2,300. The cost of a delivery by Cesarean section was over half again as much—\$3,550. [HIAA, 1982a, Table 11] Many health insurance policies cover only a small fraction of the cost of pregnancy, while covering other conditions to a much greater extent. (The cost of pregnancy is outlined by region of the country in Appendix B.)

I will not address the issue of the basic equity and fairness of providing the same benefits for conditions related to pregnancy as for other conditions. This is not necessary because Congress spoke forcefully on this issue in 1978 when it amended Title VII of the 1964 Civil Rights Act to say that pregnancy discrimination in fringe benefit plans offered to employees constitutes unlawful sex discrimination.

Rather, I will focus on two specific areas where there continues to be substantial discrimination in maternity coverage under group health insurance policies. An analysis of the situation in each of these areas reinforces the need for passage of the Fair Insurance Practices Act:

First, I will discuss the extent to which the health insurance policies commonly available to college students discriminate on the basis of pregnancy. Fully 90 percent of all colleges offer their students either discriminatory pregnancy coverage or no pregnancy coverage at all, even though doing so violates a ten-year-old federal law (Title IX of the 1972 Education Amendments).

Second, I will discuss the discriminatory health insurance coverage that is often provided to the estimated fifteen and a half million women and men who work for small businesses which are not covered by Title VII of the Civil Rights Act of 1964, or its pregnancy discrimination provisions which were added in 1978. Many small businesses (those with under 15 employees) offer their employees health insurance which discriminates on the basis of pregnancy. Under current federal law, this is perfectly legal.

STUDENT HEALTH INSURANCE POLICIES

I recently completed an extensive study of sex equity in student health services.² One significant aspect of this research was analysis of student health insurance poli-

¹ Additional information about The Equality Center and The National Women's Health Network is attached—Appendix A. I especially want to thank Alice Smith of the National Women's Health Network for her assistance.

² This research was conducted while I was director of the Health Equity Project. This study, including the analysis of student health insurance policies summarized in this testimony, was funded in part by a grant from the U.S. Department of Education, under the auspices of the Women's Educational Equity Act. All opinions are mine, and do not necessarily reflect the position or policy of the Department of Education.

cies to identify provisions which were sex-discriminatory. Almost all colleges (96 percent) make health insurance benefits available to their students. [O'Donnell, 1978, p. 302]

In the area of pregnancy, many college students have need of benefits. Researchers estimate that five to ten percent of female college students become pregnant each year. [Rindskopf, 1981, p. 115]

This research focused on *student* health services because its purpose was to identify ways to assess the extent to which schools and colleges were complying with Title IX of the 1972 Education Amendments by providing equitable health services to their students, regardless of sex. Title IX prohibits sex discrimination in schools and colleges receiving federal funds. It covers all aspects of education programs—from admissions, to athletics, to health services provided to students. The key section of Title IX states:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

The Title IX regulation, which became final in 1975 under then-HEW Secretary Weinberger and President Ford, contains specific prohibitions against sex discrimination in the health services provided by schools and colleges, including student health insurance. These provisions, which are attached at Appendix C, require that disabilities related to pregnancy and childbirth be treated like other temporary disabilities.³

In order to evaluate the extent of sex-discriminatory provisions in student health insurance policies, my staff at the Health Equity Project and I gathered and reviewed the 1980-81 brochures describing coverage in 30 colleges and universities of varying sizes from across the country.⁴ While these pamphlets do not provide detailed information about every aspect of the policy, they do outline major provisions, exceptions and exclusions.

To assess how these policies fared from a Title IX perspective, we compared the coverage available for pregnancy to the coverage available for other temporary disabilities (accidents, illnesses and sickness) at each institution. Compliance with Title IX is not based on the overall extent of the coverage in the policy. Rather, it is based on the coverage of pregnancy compared to coverage of other conditions. For example, a policy with low benefits which applied equally to all temporary disabilities, including pregnancy, would be in compliance with Title IX. In contrast, a policy with generally higher benefits, but which provided lesser coverage for pregnancy, would not be in compliance with Title IX. In general, the more frequently pregnancy is mentioned (under exclusions, limitations and special sections on maternity), the more discriminatory the policy.

MAJOR FINDINGS

The vast majority of health insurance policies offered by colleges to their students are riddled with sex discrimination. Ten years after the passage of Title IX, 90 percent of the colleges we surveyed offered their students health insurance policies which did not cover pregnancy to the same extent as other conditions.

Nine out of ten colleges provided either no health insurance coverage for pregnancy or lesser coverage than for other temporary disabilities; and

One college in four excluded pregnancy altogether from insurance coverage, while covering other temporary disabilities.

This research was conducted during the 1980-81 school year. Conversations and informal reports with college administrators, students and health personnel indicate that the situation is essentially the same today.

Even in the area where there has been a federal statute (Title IX) on the books for ten years, pregnancy discrimination is the norm rather than the exception. If you assume that no colleges covered pregnancy fully when Title IX was passed in 1972, the increase to 10 percent of policies covering pregnancy in 1981 represents roughly a one percent per year increase in the proportion of policies covering pregnancy. At this rate, the college student who had a child the year Title IX became law (1972) could be a great-great grandmother before her descendants had a 50-50

³ Student health insurance policies do not generally describe their coverage in terms of "temporary disabilities." Rather, they discuss coverage in terms of illnesses, sicknesses and accidents. In order to determine if a specific policy contains discriminatory pregnancy provisions, one must compare the pregnancy coverage to the coverage provided for illnesses, sicknesses and accidents.

⁴ This study of student health insurance policies could not have been completed without the assistance of Margaret Campbell (a student intern from Clark University) and Eve Soldinger (a Health Equity Project staff member).

chance of having their student health insurance treat pregnancy like other conditions.

The low compliance with the Title IX provisions regarding insurance coverage of pregnancy can be attributed to four major factors:

The continued offering of discriminatory policies by insurance companies;

Lack of enforcement of Title IX by the federal Office for Civil Rights in the Department of Education;

Noncompliance with the law by colleges and universities; and

Relatively few complaints of discrimination by students because of the isolation of most pregnant students and their lack of awareness of the Title IX provisions.

Enactment of the Fair Insurance Practices Act could dramatically and quickly change the current discriminatory situation, by requiring insurance companies to offer insurance policies which treat all medical conditions related to pregnancy and childbirth the same as other medical conditions. In addition, if the current legal challenge to the scope of coverage of Title IX are successful, the Fair Insurance Practices Act could be the only Federal law protecting students from sex-discriminatory health insurance policies offered by their schools.

Following are examples of actual provisions we found in the student health insurance policies we reviewed, provisions which would have to be changed if this bill were enacted:

A West Virginia college which had a \$15,000 limit on expenses for illnesses provided no pregnancy coverage whatsoever.

A private Washington, D.C., university had a \$42,000 limit on expenses for each illness, but much lower limits for pregnancy costs—\$300 for a normal pregnancy, \$450 for a Cesarean section, and \$150 for a miscarriage. The policy excluded complications of pregnancy altogether.

At a Mississippi college an optional maternity benefit plan was available for \$275 annually and provided up to \$500 in benefits for childbirth. Regular health insurance cost students \$46 and provided benefits of up to \$2,000.

At an Ohio university the additional annual premium for pregnancy coverage was \$425. This amount purchased coverage of \$350 for normal delivery, \$450 for a Cesarean section, and \$150 for a miscarriage. In contrast, regular health insurance cost \$132 annually and provided more flexible and generous coverage.

A Michigan university offered pregnancy coverage for \$55 annually and paid up to \$100 towards childbirth. Regular health insurance for students cost \$85 annually and covered up to \$1,000 in expenses for each illness.

Another college excluded single women from receiving any maternity or pregnancy benefits.

These examples, the examples cited in the remainder of this testimony and the discriminatory practices outlined in the checklist in Appendix D would all be illegal practices if the Fair Insurance Practices Act were enacted.

Our study of 30 student health insurance policies found that:

Many policies did not include pregnancy coverage at all. Most of those that did cover pregnancy did not treat it like other temporary disabilities.

In all, only 120 percent (3 colleges) fully covered pregnancy and treated it like other temporary disabilities.

The other 90 percent either provided no pregnancy coverage or less coverage for pregnancy than for other conditions.

Of this 90 percent:

Twenty-three percent (7 colleges) excluded pregnancy altogether but covered other conditions;

Twenty-three percent (7 colleges) offered some pregnancy coverage for an additional fee (although this coverage was still less than that available for other temporary disabilities under the regular policy);

Thirty-three percent (10 colleges) provided some coverage in the regular policy (although this coverage was more limited than that available for other temporary disabilities); and

Ten percent (3 colleges) covered complications of pregnancy, but not pregnancy itself. (The definition of "Complications of pregnancy" apparently varied from school to school.)

To look at the information another way, only one college in ten fully covered pregnancy. At the same time, over three quarters (77 percent or 23 institutions) offered some sort of pregnancy coverage, even if the benefits were lower and the cost of coverage was greater. The other 23 percent (7 institutions) provided no options for pregnancy coverage whatsoever.

Regarding coverage of pregnancy under the insurance policies, other findings were:

It was not uncommon for institutions to impose additional criteria in order for a person to be eligible to receive pregnancy benefits. For example:

One institution excluded single women from eligibility for coverage;

Another required that the woman purchase "family" coverage, and several required that both the "student and spouse" be covered (even though no similar requirements were made for any other condition); and

Most had a longer waiting period for eligibility for pregnancy coverage, or otherwise treated it differently from other pre-existing conditions.

When pregnancy coverage was available (either in the regular policy or in a supplementary policy), the maximum benefits were generally equal to about 10 percent of the maximum benefits for other temporary disabilities, even when there were complications of pregnancy or a Cesarean section was required. Many provided maximum pregnancy benefits of \$500 or less, an amount far lower than the average \$2,300 cost of normal childbirth. (HIAA, 1982a, Table 11)

Of those institutions that covered complications of pregnancy, many provided lower benefits than for other temporary disabilities. Half of the policies provided no coverage for termination of pregnancy.

Of the seven institutions (23 percent) which provided lesser pregnancy coverage for an additional fee, the annual additional cost ranged from \$55 to \$425. Three of these institutions (10 percent) restricted purchase of this additional pregnancy coverage to the fall, while allowing students to purchase regular coverage at other times of the year as well.

These findings do not differ significantly from a more extensive 1980 study of 198 colleges by E. J. Smith & Associates, an organization which provides insurance for many postsecondary institutions. This survey found that:

Only eight percent of college health insurance policies fully covered pregnancy and treated it like other temporary disabilities.

Eighteen percent excluded pregnancy altogether.

Another 13 percent provided inclusive pregnancy benefits, but had either limitations or deductibles placed on benefits for childbirth, abortion or miscarriage.

Forty-one percent offered some pregnancy coverage only if an additional fee were paid.

Only eighteen percent provided any benefits for abortion and complications of pregnancy.

Three percent provided no student insurance coverage. [Guest, 1981, p. 2]

A study of 76 colleges health insurance plans, published in 1978, contained similar findings⁵ [O'Connell, 1978].

Although often severe, it appears that sex discrimination in student health insurance policies often occurs because campus administrators and health service personnel pay little attention to the specific provisions of the policies, with the result that the coverage is flawed and the cost is high. It is not uncommon for the important details of the student health insurance policy (such as exclusions and the actual amount the company pays out in claims) to be a mystery to most people on campus, including the student health service personnel responsible for negotiating and authorizing the plan. For example, at a major state university, a high level health service administrator freely admitted that there was only one person in the university community who really understood the provisions of the student health insurance policy.

A frequent reason given for excluding or limiting pregnancy coverage is that it is too expensive. However, estimates of the cost of providing full pregnancy coverage under student health insurance policies vary widely and are often inflated. For example, the head of health services at a major New England university reported that the annual cost of including maternity coverage in the student health plan was less than four dollars per student.

Similarly, in a review of student health insurance policies the Health Equity Project found little cost difference between policies that covered pregnancy and those that excluded it. Of the 43 percent (13 institutions) that provided at least some pregnancy coverage in their regular policy, the annual cost ranged from \$43 to \$264. Of the 57 percent (17 institutions) that excluded pregnancy coverage from the regular policy, the annual cost ranged from \$26 to \$276.

⁵ For example, this study found that maternity benefits were usually on an optional basis only, with severe restrictions regarding enrollment and waiting periods. Further, maternity benefits were quite low (generally \$50 to \$150), premiums were extremely high for the coverage amount (usually about a third of the coverage limit), and the highest amount of coverage was only around \$700. [O'Connell, 1978, pp. 304-305]

Some college health administrators maintain that any additional cost to cover pregnancy-related conditions equally could be at least partially recovered if colleges paid more attention to negotiating the terms of the policies. For example, one campus health administrator said that some insurance companies pay out in claims only about 50 percent of the premiums they collect at small colleges. (The percentage is even lower if interest earned on the premiums is included.) The other 50 percent goes to such things as administrative costs and profits. He suggested that schools form consortia (so that they could negotiate less costly policies), look into health maintenance organizations or HMO's (which may have more favorable benefit/claims ratios), or explore self-insurance for some conditions (such as pregnancy and abortion).

In summary, Title IX has not eliminated sex discrimination in student health insurance policies. Enactment of the Fair Insurance Practices Act would undoubtedly hasten progress in this area by directly affecting the policies which insurance companies make available to colleges and college students.

SMALL BUSINESSES AND HEALTH INSURANCE DISCRIMINATION

Health insurance is one of the most common fringe benefits which employers offer their employees. Health insurance is used to pay the expenses of medical care of all kinds—medical bills, surgical bills, hospital bills, dental bills. Health insurance commonly includes such things as hospital expense coverage, surgical expense coverage, regular medical expense coverage and major medical expense coverage.

In 1979 almost three quarters of all full-time workers were covered by group health insurance plans. More than three-fourths of male workers and two-thirds of female workers enjoyed this benefit of employment. [DOL, 1981, p. iii] In 1977 over 90 percent of employees of large businesses and over half (55 percent) of employees working for small businesses (with 25 or fewer employees) had health insurance benefits through their work. [HHS, 1981, p. 4]

As director of the Health Equity Project I also undertook a small-scale consumer study of health insurance in late 1981 to identify the best health insurance policy to cover the employees of the project.⁶ I found during this informal review that most health insurance policies available to businesses not covered by Title VII of the 1964 Civil Rights Act provided fewer benefits for pregnancy than for other medical conditions.

Most people do not realize that millions of employees in this country are not protected by the civil rights provisions of Title VII of the 1964 Civil Rights Act. Title VII—which prohibits employers from discriminating on the basis of sex, race, color, religion or national origin—only applies to employers with fifteen or more employees.

In 1978 Congress passed the Pregnancy Discrimination Act, which amended Title VII to require that employers which provide health insurance benefits to their employees cover the costs of pregnancy the same as other medical conditions in their group insurance benefit plans. In enacting this provision, the authors of the bill emphasized that this had been the original Congressional intent when Title VII was passed 14 years earlier.⁷

The main provisions of the Pregnancy Discrimination Act took effect when the bill was signed into law, October 31, 1978. The provisions regarding fringe benefits and insurance programs took effect 180 days later, on April 29, 1979. Since that date it has been an explicit violation of federal law for an employer covered by Title VII to provide his or her employees with health insurance benefits which discriminate on the basis of pregnancy.

⁶ Janice Huges, research assistant with the project, provided valuable aid in this effort.

⁷ The Pregnancy Discrimination Act specifically amended title VII by clarifying that prohibited sex discrimination under Title VII included discrimination on the basis of pregnancy. The Act provides that:

The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work. . . .

The act further provides that:

This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: Provided, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affecting bargaining agreements in regard to abortion.

However, an estimated 15 and a half million employed Americans are not covered by Title VII's protections against discrimination. That is, over 20 percent of the 75 million workers in this country work for employers who are not covered by the major federal law prohibiting employment discrimination.⁸ If you assume that 43 percent of these workers are female (since 43 percent of the entire labor force is female), over six and a half million working women are not protected by Title VII. [Census, 1982, Table 1B, "United States—Establishments, Employees, and Payroll by Industry by Employment Size Class: 1980," p. 3]

Even if you reduce this figure by 50 percent (to subtract those employers who do not provide any health insurance to their employees) and another 25 percent for small employers who provide nondiscriminatory health insurance to their female employees (even though they are not now required by federal law to do so), there are still a million and a half to two million working women who are covered by discriminatory group health insurance policies.

That is, an estimated million and a half to two million women who work for small businesses are covered by health insurance policies that treat pregnancy differently than other medical conditions—policies that congress has declared illegal for larger employers (those with over 14 employees). This number would be substantially higher if discriminatory pregnancy benefits to the wives of men working in these businesses were counted (as they would be under the Fair Insurance Practices Act).

It is worth noting that some of these small businesses (with under 15 employees) are covered by provisions other than Title VII which make it illegal for them to offer lesser insurance coverage for pregnancy. For example, small organizations or businesses which receive federal education funds are prohibited by Title IX from sex discrimination in employment, including pregnancy discrimination in fringe benefit programs: there is not an exemption in Title IX for small businesses. Other organizations exempt from Title VII are covered by state human rights, civil rights or insurance laws prohibiting sex discrimination in insurance and benefit programs.

HOW PREGNANCY DISCRIMINATION MANIFESTED ITSELF IN POLICIES

It is perhaps useful to take a closer look at the types of discriminatory pregnancy coverage that I found in my 1981 search for an affordable and nondiscriminatory policy.⁹

The *additional* cost of maternity coverage varied widely from company to company, from as low as \$15 per employee per month to over \$40 per employee per month.

One company would not offer any pregnancy benefits to groups of less than 11 employees. Another would provide pregnancy benefits only for groups of five or more.

One major company had an entirely different payment schedule for maternity coverage. The result was lesser coverage for pregnancy.¹⁰

This same company capped the maximum benefit for a Cesarean section deliveries and extra-uterine pregnancies at one and a half times the arbitrary amount for pregnancy. For miscarriage or abortion, the maximum benefit was one-half the normal delivery maximum. There was no indication that there was a similar arbitrary limit on benefits for other conditions.

One company (whose representative originally said that their policy covered pregnancy like other conditions) limited coverage for a normal pregnancy to a \$250 "obstetrical fee," but provided much more comprehensive coverage for other conditions. Specifically, the policy covered 80 percent of costs above other conditions after a \$100 deductible up to \$2,000. The company then paid 100 percent of costs of \$2,000. Therefore, a normal (but relatively high cost) pregnancy costing \$3,000 would cost

⁸Small businesses (with fewer than 15 employees) constituted about 80 percent of all business establishments in the country, according to the Small Business Administration. The figure of 75 million U.S. workers includes both full and part time employees, but excludes government employees, railroad employees and self-employed persons.

⁹There is some informal indication that, in the year and a half since I searched for a policy, there has been some improvement in the situation. For example, one insurance agent said that there has been a trickle down effect of the Title VII provisions that apply to larger employers and that today about half of the policies sold to businesses with under 15 employees do not discriminate based on pregnancy.

¹⁰Under the formula this company used, for maternity they paid 100 percent up to an arbitrary maximum amount chosen by the employer. For other conditions, the insurance company used both a more complicated and more generous formula. The company paid 100 percent of the first \$300 in expenses. Then the insured (employee) paid a deductible of one to several hundred dollars depending on the specific policy coverage. Then the insurance company paid 80 percent of the charges above this until the insured had paid \$500, then the insurance company paid 100 percent of the charges.

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the patient \$2,750 in out-of-pocket costs, while care for another condition costing \$3,000 would cost only \$480 (\$100+20 percent of \$1,900+0) in out-of-pocket costs.

There are several additional points worth mentioning—the extent to which employers covered by Title VII do not comply with the pregnancy provisions of the law, individual and non-employment-related group policies which can now legally discriminate on the basis of pregnancy, and sex discrimination in disability coverage.

Although employers with fifteen or more employees are covered by the pregnancy provision of Title VII, it is not clear that all of these employers are complying with these 1978 provisions. In 1982, 89 percent of employees with medical insurance had some form of maternity protection for either themselves or their spouses (compared to 57 percent in 1977, before Title VII was amended). Among employees with maternity coverage, 90 percent were covered for full plan benefits in 1982, compared to 43 percent in 1977. [HIAA, 1982b, p. 13] The Fair Insurance Practices Act would assure that the 11 percent of employees currently not covered by any form of maternity protection be covered and that the 10 percent not fully covered for pregnancy be fully covered.

In addition, individuals and private group health insurance policies (i.e., those policies not provided as a fringe benefit of employment) are currently free under federal law to discriminate on the basis of pregnancy. An individual woman, or a woman who purchases health insurance through a non-employment-related group (such as an association or organization) now has no federal protection against pregnancy discrimination in the policy she purchases. Similarly, a man who purchases family coverage under these plans has no assurance that his wife's pregnancy will be treated by his policy in a nondiscriminatory manner. The Fair Insurance Practices Act would end these discriminatory situations.

Finally, although the small study I conducted did not look in detail at disability coverage, the attached article on disability insurance from the March 1983 issue of *Consumer Reports* magazine shows that a 35-year-old female pays from one-and-a-third to one-and-three-quarters times as much as a 35-year-old male for the same disability insurance coverage. ["Disability Income Insurance," 1983, p. 125]

In summary, the extent of pregnancy discrimination in college student health insurance policies and in the policies offered by many small businesses and elsewhere supports the need for passage of S. 372, the Fair Insurance Practices Act.

APPENDICES ¹¹

- A. The Equality Center and The National Women's Health Network.
- B. "The Cost of Having a Baby," from the Health Insurance Association of America publication by that name, 1982.
- C. Health Services and Title IX.
- D. Checklist for Identifying Pregnancy Discrimination in Health Insurance Policies.
- E. "Disability Income Insurance," from *Consumer Reports*, March 1983.

The CHAIRMAN. Thank you.

Ms. MORRISON.

Ms. MORRISON. Good morning, Senator.

Thank you for giving me the opportunity to come before the Commerce Committee and testify in support of S. 372.

I am Elizabeth Morrison, a commissioner with the Maryland Commission for Women, and I am here also on behalf of the National Commission, and I would like to have read into the testimony a statement from the National Commission that is part of my testimony, and I will not elaborate on it here.

The CHAIRMAN. It will be in total in the record.

Ms. MORRISON. I am also vice president and manager of financial services for Herget Co. in Baltimore, which is an actuarial benefits and compensation consulting firm. I handle their individual life insurance, individual disability, and small medical plans. I am a broker in the industry, and last week checked to find out how

¹¹ The appendices have been retained in the committee files.

many licenses I had in light of the testimony up here. I hold licenses currently with 37 individual insurance companies. My job involves deciding with my client the amount of life and disability or health insurance that is appropriate for the particular situation, and then I go to the marketplace and shop for the best product that is available to meet their needs.

In the area of disability insurance or salary continuance, the insurance industry as a whole continues to defend its practice of charging separate premium rates based upon existing actuarial data that supposedly justifies these rates. However, I find it very interesting that competition has already moved several major insurers to offer unisex rates to their top category of professionals, that is, those women who are lawyers, doctors, CPA's, and company managers.

These companies readily state that there is no current data that accurately shows the real rate of disability for the so-called new breed of working women. Since I go to the marketplace and broker for my client, I am constantly contacted by company representatives who wish me to sell their products.

Recently a company that I have studied at great depth has made available a disability product that has such a sharp difference in their premium cost I priced it out for one of my clients who is an attorney. A woman attorney, aged 30, wishing to have disability at \$3,000 a month to the age of 65, has found that her annual premium decreased by \$1,000 a year, or over almost 50 percent of the previous cost, with the same A plus carrier.

So, what we found is on Friday she would have been charged close to \$2,200. On Monday, the same product by the same carrier—under the unisex rate was available to her at \$1,200.

I have been writing insurance business for the last 5 years with one company that uses unisex tables across the board for disability. That company is Selected Risks of New Jersey, and when they decided about 5 years ago to go to unisex rates, they lowered the female rate to be the same as the existing male rate. They have offered that policy with no alterations for the last 5 years. This is a company that will normally write blue collar workers and will also write nonsalaried homemakers, and, to my knowledge, is the only such carrier offering these individual policies at unisex rates.

Insurance companies base their premium for coverage on the following items. They base it on life expectancy. They base it on age and sex. They base it on the health of the proposed applicant, job hazards, company overhead, and agent commissions. Most recently at least one company has been offering a 7 percent premium discount to nonsmokers. This is relatively new in the area of disability.

The comment was made earlier that these rates are fine tuned. I would state that I am not in agreement with this. As a matter of fact, in the last several years there has been such price competition within the industry, that I am finding, at least in the life rates, reductions in premium of often as much as 50 percent from the same policy sold by the same company 2 years previously.

Also, a statement was made earlier about the setback for women. In disability there is indeed a setback, but I would like to comment about life insurance. The comment was made that there is a sub-

stantial difference in premium. I would tell you that on a policy which I sell regularly, for \$100,000 for anyone up to the age of 35, the entire difference in cost on the marketplace now is \$2 on the first annual premium.

Testimony that I have heard before today constantly says that we are in support of the concept of the bill and are working hard together to design a bill that we can all live with.

The CHAIRMAN. I have to ask you to wind down.

Ms. MORRISON. We have been working very hard on this for the last months, and until last week, when it was the industry's choice to pull out of that negotiation, that has forced us to take a much more militant stance, and I am here to ask your support and endorsement of S. 372.

[The statement follows:]

STATEMENT OF ELIZABETH S. MORRISON, COMMISSIONER, NATIONAL ASSOCIATION OF COMMISSIONS FOR WOMEN

Thank you for giving me the opportunity to come before the Commerce Committee and testify in support of SB 372. I am Elizabeth S. Morrison, a commissioner with the Maryland Commission for Women. I am also Vice-President and Manager of Financial Services for Herget and Company, an actuarial benefits and compensation consulting firm in Baltimore. I handle their individual life insurance, individual disability and small medical plans. I am a member of the Million Dollar Round Table and I hold numerous industry awards.

I am a broker in the insurance industry; currently licensed with approximately thirty (30) insurance companies. My job involves deciding with my client the amount of life and/or disability insurance that is appropriate for my client's particular situation. I then go to the marketplace and get the best possible product and price to meet those needs.

In the area of disability or salary continuance, the insurance industry as a whole continues to defend their practice of charging separate premium rates based on existing actuarial data that "justifies" these rates. However, I find it very interesting that competition has already moved several major insurers to offer unisex rates to their category of "professionals"—those women who are lawyers, doctors, CPA's and company managers. These life insurance companies readily state that there is no current date that accurately shows the real rate of disability for this so-called "new breed" of working women.

Since I broker for my clients, searching the marketplace for the best product to meet his or her needs at the least cost, I am contacted constantly by company representatives who wish me to sell their products.

It has recently been stated to me by a Monarch Brokerage representative that the new unisex tables available through their company are a result of their own studies. Accurate studies on professional women are not available since substantial numbers of women have not been in the professional ranks long enough to gather representative data. I was told that Monarch felt that a female doctor or female lawyer would be just as anxious to return to her practice as a male lawyer or doctor and therefore, the company felt that it has an equal rather than unequal risk.

Women's entire working pattern has changed so sharply in the last decade that current data is just not available. Therefore, the insurance industry is basing its present premium structure on largely outdated information. Since no insurance company is going to take the step of moving to unisex rates, as several now have done, without doing extensive research to set up the appropriate reserves to fund future claims, I find it extremely interesting that the insurance industry can, on the one hand loudly proclaim actuarial justification for two-tiered rates, and at the same time, create a mass advertising campaign claiming the virtues of unisex rates for professionals.

I would like to give an example of the drastic reduction in cost of disability coverage available to professional women under the unisex rates.

A woman attorney, age 30 wishing to have \$3,000 a month disability to age 65 will find her annual premium has decreased by \$1,000 a year or almost 50 percent of previous cost with the same A+ carrier.

I have been writing insurance business for the last five years with one company that uses unisex tables across the board for disability. The company is Selected

Risks of New Jersey. When the company decided to use unisex rates, they lowered the female rate to be the same as the existing male rate. They have offered the policy with no alterations for the past five years.

This company also insures blue collar workers and nonsalaried homemakers and, to my knowledge, is the only such carrier offering these individual policies using unisex rates.

Insurance companies base their premium for coverages on the following items:

1. Actuarial tables showing life expectancy.
2. Age and sex.
3. Health and the proposed applicant.
4. Job hazards.
5. Company overhead.
6. Agent commissions.

Most recently at least one company, Monarch, has been offering a 7 percent premium discount to non-smokers. If more emphasis were placed on good health rather than the applicant's sex, I think the difference between existing rates for males and females could be substantially reduced. The industry still assumes that women do not want to work and, if given a choice, would prefer to remain in the home. This assumption translates into very real dollars for women—which the industry refers to as "malingering". Given the fact that almost half the families in the country are currently headed by a single women, the assumption that there is a "choice as to whether to work or not" becomes all the more illogical.

1. Almost all insurance is sold on a commission basis. Currently, commissions are based on the policy premium and vary by product, but average approximately 45-50 percent of the first year's premium.

With disability products (where women are currently charged, on average, a 30 percent greater premium than men) the agent earns a higher commission selling the coverage to women than to men.

Again, the discrimination problem could be drastically reduced immediately if the commissions on men's and women's policies were figured differently and not on an automatic percentage of the premium—which only magnifies the existing spread between men and women's rates.

2. As for overhead, surely it cannot cost a company more in office space or advertising or employee salaries to sell to one sex compared with the other.

3. Companies tell me that they must charge substantially higher premiums for disability policies for females because women are out more often and for longer periods of time.

Apparently, this is open to interpretation since other witnesses have presented testimony before this Committee that has stated women, while out from work more frequently than men, are away for shorter periods of time. This can be interpreted as more frequent checkups and fewer major health problems.

4. In most cases, individual disability policies do not include maternity coverage. Yet maternity is included in the industry's justification for higher rates. This is obviously discrimination in the extreme or "double jeopardy".

It is far too easy to play one state against another. I heard testimony on this bill in April in this hearing room from industry representatives who stated that this should not be viewed as a federal jurisdiction but rather as the prerogative or individual states.

I urge the Committee to consider this legislation as an entity, not eliminating any portion of property and casualty, pension, health, life or disability. The impact on women is too great, the need for total legislation at the federal level is immediate. I urge you to redress the discrimination through passage of SB 372.

Attachments.

NATIONAL ASSOCIATION OF COMMISSIONS FOR WOMEN,
Charleston, W. Va., April 20, 1983.

The National Association of Commissions for Women voices its concern for the very serious discrimination against women in insurance. This gender-based discrimination which results in higher premiums and/or lower benefits for women can no longer be justified by use of outdated data or notions about women's participation in the work force.

Many of our member commissions have studied discrimination and have advocated reform of state insurance regulations. As the national association representing official state and local commissions for women, the National Association of Commissions for Women urges the Congress to redress this discrimination through passage of Senate Bill #2204.

NANCY MATTHEWS, *President.*

HEALTH COVERAGES FOR FEMALES

Current health plan costs based on metropolitan area State of Maryland.

Plan I.—\$150.00 deductible, \$1,000,000 coverages 85/15 co-insurance to \$5,000.00, plan pays 100 percent after first \$5,000.00 expenses. Up to \$300.00 of expenses related to accidents have deductible waived.

BASIC PLAN WITHOUT MATERNITY ¹

	EE only	EE and family
Under age 30.....	\$53.34	\$159.18
30 to 34.....	58.38	164.99
35 to 39.....	67.90	180.11
40 to 44.....	78.82	193.20

BASIC PLAN WITH MATERNITY ¹

	EE only	EE and family
Under age 30.....	\$61.74	\$180.18
30 to 34.....	66.78	185.99
35 to 39.....	76.30	201.11
40 to 44.....	87.22	214.27

¹ Does not include monthly administrative fee or life insurance.

Maternity costs average 10 up to 20 percent of basic premium depending on age of policyholder.

Plan II.—\$100 deductible, \$1,000,000 coverages 80/20 co-insurance to \$1,000.00, plan pays 100 percent after first \$1,000.00 expenses. Up to \$300.00 of expenses related to accidents have deductible waived.

BASIC PLAN WITHOUT MATERNITY ¹

	EE only	EE and family
Under age 30.....	\$55.00	\$162.00
30 to 34.....	57.00	178.00
35 to 39.....	61.00	194.00
40 to 44.....	71.00	214.00

BASIC PLAN WITH MATERNITY ¹

	EE only	EE and family
Under age 30.....	\$73.00	\$192.00
30 to 34.....	70.00	200.00
35 to 39.....	69.00	207.00
40 to 44.....	74.00	220.00

¹ Does not include monthly administrative fee or life insurance.

Maternity costs average 10 up to 18 percent of basic premium depending on age of policyholder.

Plan III.—\$100.00 deductible, \$1,000,000 coverages 80/20 co-insurance to \$2,500.00, plan pays 100 percent after first \$2,500.00 expenses. Up to \$300.00 of expenses related to accidents have deductible waived.

BASIC PLAN WITHOUT MATERNITY ¹

	EE only	EE and family
Under age 30.....	\$50.34	\$134.24
30-39.....	62.42	162.59
40-44.....	83.92	216.83

BASIC PLAN WITH MATERNITY ¹

	EE only	EE and family
Under age 30.....	\$91.11	\$139.44
30-39.....	77.09	197.26
40-44.....	85.29	218.20

¹ Does not include monthly administrative fee or life insurance.

Maternity costs less than 5 percent added to premium.

Plan IV.—\$100.00 deductible, \$1,000,000 coverages 80/20 co-insurance plan 100 percent after maximum \$500.00 per individual, \$1,000.00 per family.¹

	EE only	EE and family
Under age 30.....	\$65.00	\$166.00
30-39.....	71.00	175.00
40-49.....	76.00	192.00

¹ Does not include administrative fee on life insurance.

The CHAIRMAN. Thank you very much.

I know Senator Exon has to leave, and I believe, Jim, you have some questions to ask on behalf of Russell Long.

Senator EXON. Thank you, Mr. Chairman.

I want to apologize to the panel. I must leave for about 20 minutes for something that I just cannot get out of. The next person to testify is Senator Shehee from Louisiana, and Ms. Shehee, my colleague Senator Long, has asked me to ask you a question. Unfortunately, Senator Long is tied up in the Finance Committee with two important markups today, and otherwise he would have been here, and he asked me to apologize before you testify so that I might hear your answer. Could you possibly respond to two questions that he requested that I ask you?

First, since you have a diverse background from the other members of the panel, we are particularly interested in what you have to say on this important matter before us. You have made public policy as a State senator in Louisiana. You are also well known throughout the State as an ardent supporter of the Equal Rights Amendment. Could you please give us for the record your views on this bill, and if you want to read your statement now, fine.

**STATEMENT OF VIRGINIA KILPATRICK SHEHEE, PRESIDENT,
KILPATRICK LIFE INSURANCE CO.**

Ms. SHEHEE. If I could read my statement, sir, I believe it would help, and then if there are any other questions, perhaps in the interest of time——

Senator EXON. Fine, we will receive that.

Ms. SHEHEE. Mr. Chairman and members of the committee, my name is Virginia Kilpatrick Shehee. I am president of Kilpatrick Life Insurance Co. of Louisiana, domiciled in the city of Shreveport, and I appear here today as a woman who has strong feelings in opposition to S. 372 and the sister bill, H.R. 100, because I really see it as a bad piece of legislation that would actually discriminate against women under the guise of helping women achieve equal rights.

As a State senator in the Louisiana Legislature in the middle seventies, I took a stand for passage of the Equal Rights Amendment for women. As the only woman in the senate, it was therefore necessary for me to be well aware of the plight and problems of American women. It is from this experience that I conclude that instead of promoting civil rights for women, this bill would have the effect of diminishing the civil rights of women.

Furthermore, S. 372 contains the ominous immediate and future capability of visiting financial hardship and bankruptcy on small insurance companies which have a fine record of hiring women. As president of an insurance company, our decades long record of hiring and promoting women in Kilpatrick Life Insurance in sales and management jobs has become an example that has been increasingly followed by many small insurance companies today.

Legislation that would impose financial hardship and impede growth of small companies such as Kilpatrick Life Insurance Co. would have the effect of reducing the job opportunities of women. Women occupy over 100 jobs in our company. Fifty-two of our 56 sales representatives are women. One-half of our staff managers are women.

Last Friday I discussed S. 372 and H.R. 100 in a meeting with about half of our women sales representatives in attendance. They urged me to register their strong opposition to this misleading legislation. The consensus was that since Congress does not have the power to give the same life expectancy to men and women, the proposed legislation would be grossly unfair to both men and women.

Unfairness to our over 100 women employees would take this form under S. 372 and H.R. 100. No. 1, significantly higher automobile insurance rates to our young women employees at a time in their lives when they are least able to afford higher premiums to support the higher number of automobile accidents experienced by men. Second, higher life insurance rates for our women employees whose families are practically or solely dependent upon them.

No. 3, a loss of potential job opportunities to our current and future women employees to service the current expanding and future burgeoning market for individual retirement annuities. It is patently unfair that under S. 372 and H.R. 100 working women would have to bear the burden of higher insurance premiums during their working years only to find later that insurance compa-

nies have been forced to become unable to supply them with the individual lifetime annuities because of the effect of this legislation on the market forces.

I feel that women deserve fairness, but fairness for women cannot be purchased by penalizing men because they die earlier. They do not live as long.

I find untrue the statement distributed to this committee that the natural differences in insurance rates for men and women are disadvantageous to women. In the final analysis as a former State senator I find untrue the charge in the statement that "State legislators, insurance regulators, and the courts have not only failed to protect women consumers, but are often aligned with the insurance industry and employers against them."

As the president of an insurance company subject to constant oversight of the insurance regulators, I refute this charge, bordering on collusion, and as an employer, I refute the statement that the courts of the United States have "aligned" themselves with the insurance industry and employers against women. As an insurer, I particularly resent the charge in the statement that "insurers selectively use real or imagined differences between women and men to manipulate prices and payouts." This charge of manipulation to disadvantage women is pernicious.

I would like in my closing comment to say to the committee that S. 372 and H.R. 100 bring to mind an instructive line from Gilbert and Sullivan: "Things are seldom what they seem." I respectfully urge the committee to consider our statement on S. 372 and H.R. 100.

Thank you, sir.

Senator EXON. Ms. Shehee, you certainly answered the first question that I asked you quite well in your statement.

The second question that Senator Long asked me to pose to you, and I notice that you made reference in your statement about young women who could not conveniently afford to pay the increased cost for casualty insurance, do you believe that this bill will have any different effect or adverse effect on one other important group of women, those in middle age or among minority women?

Ms. SHEHEE. Yes, sir, I do.

Senator EXON. How?

Ms. SHEHEE. Let me just take a moment, if I may. Louisiana has many small life insurance companies. I am hesitant to give the number, but I am sure it is over 100 small life insurance companies, and many of them are minority.

For example, Mr. Joe Misshore of New Orleans is president of the Gertrude Gedes Willis Life Insurance Co., which was founded by a member of his family, and he is black, and he is very concerned about this, and he feels that it will, if this bill—if these two pieces of legislation are passed, that he will not be able to sell to his minority groups.

I think he has expressed this to Senator Long.

Senator EXON. Thank you, Senator.

Thank you, Mr. Chairman. I will be back in a few moments.

The CHAIRMAN. Mr. Eckert, let me ask you, we are having difficulty getting hard statistics on why or allegedly it is more costly to

insure women for health and disability. Can you help us? Why is disability insurance more expensive for women?

Mr. ECKERT. Actually, in the rating of our products, and in my own company now, with our experience going back over the 70 years, whether it is disability, whether it is health insurance, we have our own statistics base. We look at each sale. We look at them by age and by sex and by the form of the policy. We have noticed that over that period, and the statistics say that women's experience in the age group from 20 to 40 is 100 percent heavier than for men on morbidity in the disability area. It is about 50 percent heavier in the hospital and physician cost area for that same age group.

The CHAIRMAN. Than men?

Mr. ECKERT. Than men, right. It seems to cross over at about age 50 or 55. Actually, when you get into the upper years women have lesser expenses in that area than men. I think it is during their childbearing years. There is a difference there, a sizable difference in the claims cost.

The CHAIRMAN. Yes, sir. Go ahead.

Mr. FUTIA. Mr. Chairman, if I might, I represent a company that is domiciled in New York State and therefore primarily governed by the New York State Insurance Department, although we are also regulated by all of the other States. In answer to your question, we are in possession of, and required in some respects which I will detail in a minute, to observe the study that was conducted by the New York State Insurance Department and published in 1976, which establishes the cost differential by experience of females versus males in disability insurance.

This represented the experience of the companies through the years 1968 to 1973. There are also studies of the Society of Actuaries for the period of 1978 to 1979, and that experience shows similar differences as the one I referred to in New York State.

I think it might be interesting to note another important requirement of our regulation in New York. Since 1978, insurance regulation has required disability insurers like ourselves to take sex-related cost differences into account in making rates. Companies such as ours must satisfy the superintendent of insurance that unisex ratings are not inequitable for the coverage period. I think this may help to answer in part the question you have raised.

The CHAIRMAN. I appreciate that. I may be back to you to get some more information, if you would not mind.

Mr. FUTIA. I would be glad to try to make it available.

The CHAIRMAN. Thank you.

Ms. DUNKLE. Could I add something on that subject?

The CHAIRMAN. Yes.

Ms. DUNKLE. There is some interesting information on that issue in a recent publication, "Disability in the United States: Extent and Economic Impact," published by the Health Insurance Association of America. One interesting point appears on page 8, where it says that in a 1970 survey by the Census Bureau, women reported less disability overall than men. Then it goes on to say, "More recent Census Bureau surveys show that women are more likely than men to have a work disability. * * * The Bureau attributed the higher disability rate for women to differences in labor force

attachment and work opportunities rather than to differences in health conditions." I will be glad to provide you with a copy of this.

The CHAIRMAN. Thank you very much. I would appreciate that.

Ms. MORRISON, let me ask you a question. We received from one company, if I may put it, an advertisement that simply adding pregnancy to health insurance benefits is going to cost \$500. You have sold enough of these policies in one way or another to know. Take first a 30- to 35-year-old single woman, individual health coverage in Baltimore. Now, the single woman—on average, single women do not have as many babies as married women. I understand that. And I will get to the second part of the question later. How much is it going to cost to add pregnancy benefits, and how much without pregnancy benefits?

Ms. MORRISON. As you said, I do a great deal of purchasing of health policies for females, particularly because a lot of them work with small companies that don't offer coverage or as a result of divorce or separation they have to go to the marketplace and get separate coverage. To begin with, medical coverage itself is extremely expensive, and many women cannot afford it. I have a list of 40 people right now that I am trying to get coverage for, who have been excluded because of preexisting conditions, or who have been dropped off spousal policies. I brought with me a comparison of four companies for which I write on a regular basis, and at the age under 30, the difference is minimal.

The CHAIRMAN. Under 30?

Ms. MORRISON. Under 30. At the age over 44, the difference is minimal.

The CHAIRMAN. This is for adding pregnancy?

Ms. MORRISON. This is for adding pregnancy. I am taking a large metropolitan area, and I am taking the State of Maryland, but this would be similar in the northeastern sector. The maximum with any of the four companies that I have is about 18 percent, and in one case it is 10 and in one case it is zero. By that I mean that the coverage is automatically included, and the product is identical and competitive in cost with the three other policies that I write without maternity coverage. In one case I think it is averaging about 5 percent.

Now, these are individual policies available with on average a \$100 to \$150 annual deductible, \$1 million coverage, and then co-insurance, either 80-20 or 85-15, up to a maximum of in all four cases \$5,000, and then what is called a kickout or stop loss, so the plan pays 100 percent thereafter, and what I am finding and what I feel from my own experience, is that these figures have been enormously inflated.

The CHAIRMAN. So in your experience you have got nothing that approaches \$500 for adding pregnancy with any of these companies?

Ms. MORRISON. Absolutely not.

The CHAIRMAN. At any age?

Ms. MORRISON. No, we are talking about a differential with one company. If we take the women that you spoke of between 35 and 39, let me take the highest differential—excuse me. Let me take 30 to 34, because that is the age that they would be more likely to perhaps be pregnant, and we are talking about a difference of \$58 a

month to \$66 in one case, \$57 to \$70 in another, \$62 to \$77 in another, and the difference on the first is \$65.

Now, these are base costs. In some cases there is mandatory life insurance of a negligible amount of, say, \$5,000, and there is a monthly administrative fee, and I have not factored those in.

The CHAIRMAN. Mr. Eckert, do those figures sound reasonable to you?

Mr. ECKERT. No, they do not, because let us just think about it logically for a minute. Ms. Dunkle correctly mentioned the average cost of a delivery, a normal delivery at \$2,300 and a cesarean at \$3,500. An insurance company simply couldn't afford to price an individual policy for a young gal just getting married at those prices. Especially given that we you would have to put a commission and administrative expenses on that. You [the company] could only pay for one baby every 10 years or so, and no other medical expenses, to even break even. So I do not see that—

Ms. MORRISON. Senator, I am writing these policies right now, and there are four companies—

The CHAIRMAN. Do you want to name the companies?

Ms. MORRISON. I do not know how fair that is. If you would like—

The CHAIRMAN. Yes, I would be curious.

Ms. MORRISON. One is American Health and Life. One is Provident Mutual. One is John Alden, and the other is Ohio State.

The CHAIRMAN. Are those respectable companies?

Mr. ECKERT. They certainly are. I would think that with the competition we have in the health insurance field, that they would have a corner on the market in supplying the needs at prices like that.

Ms. MORRISON. I have spent an enormous amount of time this year finding companies who would write individual policies, because the need is absolutely acute, and a great many companies who were in the market previously have opted out of this market. I can appreciate the problem, but on behalf of my clients I have to find something for them. I have written with every single one of these companies within the last 12 months. These are rates that are accurate as of the month.

The CHAIRMAN. Mr. Futia.

Mr. FUTIA. Mr. Chairman, may I add, we are in the business of making money. That is our primary responsibility, consistent with giving service and value in the products to our policyholders that buy them. The marketplace has a way of leveling what is available and at what price. The incentive to make profit is a driving force. It certainly motivates our company, and I think is true of most other companies in the health insurance business. If it were a simple matter of merely pricing to a level to get additional business on which you have the assured margins of profit, we would all be selling maternity benefits in our individual coverages.

Let me give you our experience. We wrote maternity coverage in our company through our individual policies, and when the New York State law was enacted mandating maternity benefits in individual contracts, I think some time in 1977 or 1978, there were about 75 companies that were writing maternity benefits in their health care coverage.

Since the law was enacted, the number of those companies has been reduced to 22 and few of these companies sell policies to women under age 40. Now, these were all companies interested in selling a product on which they can make money. Our company found that our experience worsened to a degree that we had to withdraw that line of business. We no longer write maternity coverage in New York, because we cannot afford to price it adequately to cover our costs and hopefully make a margin of profit.

The CHAIRMAN. Give me your speculation as to how these four companies you mentioned, are they writing it as a loss leader?

Mr. FUTIA. I can speculate in two or three different ways. One, I have found from my experience—I, too, happen to be a life member of the million dollar round table. I spent 28 years selling insurance, health, individual life, and to a lesser degree property and casualty, so I am somewhat familiar, although admittedly my experience goes back 16 years ago.

However, I have found when I was selling life insurance that for me to be able to make a comparison of one health and disability policy against another, and this is especially true in health and disability insurance and in order to reconcile cost differences, you have got to look at all of the contractual benefits, of which there are many. You can have many variations. Without in any way questioning the credibility of what Ms. Morrison has testified to, I am saying there must be a reason for that if we analyze the benefit.

The CHAIRMAN. But that is not quite what she was saying. I was asking her how much additional it is going to cost to cover the pregnancy. It does not matter therefore what the other benefits are. The benefits may be minimal, but how much additional is she having to pay for the pregnancy, and she—if I am correct, you are citing these figures.

Ms. MORRISON. That is correct.

Mr. FUTIA. Let me give you an example of what I mean. Our policies used to provide a fixed maternity benefit up to a certain amount in dollars, not necessarily all of the cost for maternity. Now, you might have another policy that provides all costs of maternity, in which case the premium is going to have to be higher. It is possible under some contracts to have other elements of cost sharing, such as deductibles and co-insurance. Generally that is not typical of maternity, but it is possible. There are a lot of ways in which pricing can be modified according to the benefits provided, and that is my only point, and that it takes analysis to make that determination.

The CHAIRMAN. I think I followed that. I am not sure.

Ms. MORRISON. Senator, I would agree, but I particularly factored those out. These are not policies that have limited payouts. These are full benefits, and in the case of at least one of them, total well baby care is included, too. I am trying to find the optimum product for my client that is not going to have those contingent factors, so that at a later date when called upon we are going to find that there are all kinds of exclusions in fine print that would eliminate the product.

The CHAIRMAN. I have no more questions. I appreciate it. This will be our last hearing. We have a couple of more panels, but it

has been most illuminating so far. I might tell the rest of the group I plan to go right on through lunch, and we will finish up whenever we finish with the last.

We will next go to Mr. Robert Knowles and Mr. Donald Grubbs, and again, could I ask the people to move out of the room quickly, and keep the door closed, and try not to talk too close to the door outside?

Mr. Knowles, go right ahead.

STATEMENTS OF ROBERT KNOWLES, CHAIRMAN, ACADEMY COMMITTEE ON RISK CLASSIFICATION, AMERICAN ACADEMY OF ACTUARIES, ACCOMPANIED BY ROBERT SHAPLAND, AND CLAIRE L. WOLKOFF, MEMBERS; AND DONALD S. GRUBBS, JR., GEORGE B. BUCK CONSULTING ACTUARIES, INC.

Mr. KNOWLES. It appears introducing a panel of actuaries clears a room just as fast as it does elsewhere.

My name is Robert Knowles, and appearing with me are Claire Wolkoff and Robert Shapland, and we represent the American Academy of Actuaries, a professional association of over 7,200 actuaries.

In 1980, the House Subcommittee on Consumer Protection and Finance asked us to study the economic impact of a bill similar to S. 372. We reported on that study at last year's hearings on S. 2204. With regard to insurance, we found that this bill would have little impact on the price paid by individuals for life and health insurance obtained on a group basis through their employers.

The CHAIRMAN. Say that again.

Mr. KNOWLES. This bill would have little impact on the price paid by individuals for life and health insurance obtained on a group basis through their employers. Differences in cost by sex are generally borne by the employers in that circumstance. The bill would, however, affect consumers purchasing insurance on an individual basis. If this bill becomes law, women will pay more for life insurance than for automobile insurance, and men will pay less. On the other hand, men will pay more for annuities and for disability insurance, and women will pay less.

Both men and women will pay more for medical expense insurance, but the increase in cost to women will be more than offset by an increase in maternity benefits paid. In the aggregate, women will pay more for insurance and men less if S. 372 is enacted, but the impact on individual men and women will vary widely and go in both directions.

With regard to pensions, the effect of this bill would be to increase benefits to some women under defined contribution pension plans, and to increase benefits to some men under defined benefit pension plans. Annuity benefits purchased by individuals through personal retirement savings would increase for women and decrease for men. It is extremely difficult to estimate the total cost of these increased pension benefits for the wide variety of plans that are in operation. Some defined benefit plans already operate on a unisex basis and would not be affected. Some defined contribution plans could avoid a cost impact by dropping life annuity options.

Our original report estimated that the annual cost of the increased pension benefits would be \$5.5 billion. A member of our organization suggested that in preparing this estimate, we had misinterpreted a column heading in a table we used. After consulting with one of the authors of the paper containing that table, and reviewing more recent data, we have concluded that the annual cost of these increased pension benefits would be something less than \$2.5 billion.

A Department of Labor report has estimated this cost at between \$1.2 billion and \$1.7 billion. We feel that is a reasonable estimate of this cost. Our report did not evaluate whether men or women would gain the majority of these increased benefits. The Department of Labor report estimates that men would receive the majority of the increased benefits, but again, it is important to realize that the impact on individual men and women would vary widely depending upon the type of pension plan and the benefit option elected.

Also, while the cost of these increased pension benefits, no matter whose estimate you use, represents a very small percentage of the total cost of the pension system, the cost impact on individual pension plans would vary very widely.

I would like to move from the issues of financial impact and close with two observations. First, actuaries use risk classification in an attempt to base insurance prices on the actual cost of the benefits being provided. Price differentials by sex have been based on real differences in claims experience, just as with price differentials based on age, smoking habits, occupation, and so forth.

Finally, the American Academy of Actuaries has not taken a position on whether S. 372 should be enacted. Our members have in the past and continue to serve a wide variety of both unisex and sex-distinct insurance and pension arrangements. We understand that this debate involves questions of public policy and civil rights principles in addition to the actuarial and financial issues addressed by our training and experience.

[The statement follows.]

STATEMENT OF ROBERT L. KNOWLES, AMERICAN ACADEMY OF ACTUARIES

Introduction

This statement is filed by the Committee on Risk Classification of the American Academy of Actuaries ("Academy"). The Academy is a professional association of over 7200 actuaries which was formed in 1965. This membership includes actuaries employed by private insurance companies, independent consulting firms, federal and state government agencies and colleges and universities. Membership includes 85% of the total number of enrolled actuaries who are qualified under ERISA. Descriptions of the Academy (Appendix A) and its Committee on Risk Classification (Appendix B) are attached.

In August 1980, the Academy was asked by the House Subcommittee on Consumer Protection and Finance to undertake a study of the economic impact of H.R. 100, a bill with provisions similar to S. 372. That study was completed in the spring of 1981 and provides the basis for the economic impact information presented here and in testimony last year on S. 2204. A copy of the detailed report has been previously provided to this Committee. One element of that report, the impact on pension plans, has been changed here to both change a misinterpretation in our previous report and to reflect more recent information. This change is described later.

This report then summarizes briefly our analysis of the economic impact of S. 372. As we pointed out in our testimony at the 1981 hearings, our assessment of the bill's impact is not precise. No study of the potential impact of such far-reaching legisla-

tion can precisely determine the practical effects of implementing regulations, marketplace reactions, and judicial interpretations. Nevertheless, we can give you a general assessment—our best judgment as to the probable impact.

Our object is to report on the potential financial impact of S. 372. We understand that this bill is motivated by concern over important questions of social policy and civil rights principles, areas in which our membership claims no special training or expertise. The Academy does not, therefore, have a recommendation concerning how the Committee should vote on S. 372. What we can do, is help you make your decision with an understanding of both the bill's financial consequences and of the use of sex-distinct mortality, morbidity, and claims experience. We can also answer questions concerning unisex insurance and pension arrangements which now or in the past have operated successfully with the help of our members. These include a number of pension plans and many insurance products.

The following report is divided into four general parts: I. Major conclusions from our 1981 study, II. The economic analysis of the impact of S. 372 as presented at previous hearings (updated to reflect new information), III. Concerns we have about the language of S. 372, and IV. Discussion of several statements which have been made in the debate on S. 372 and similar bills.

I. MAJOR CONCLUSIONS

1. Many aspects of S. 372 would have little impact—specifically, provisions relating to race, color, religion, and national origin, and provisions relating to the availability of insurance without regard to sex.

2. Provisions relating to pricing differences by sex and the mandating of pregnancy benefits would significantly effect individual insurance policies. The impact on group insurance would be small. The impact on individual insurance consumers varies by type of insurance and depends on individual circumstances. The estimated effects on individual male and female purchasers is summarized in the following table:

Type of insurance	Percent change in price					
	Increase (+) or decrease (—)					
	Male age 20	Male age 40	Male age 65	Female age 20	Female age 40	Female age 65
Life insurance	-2	-3	(¹)	+6	+11	(¹)
Health insurance:						
Medical expense:						
Unisex rating	+18	+13	0	-12	-7	0
Full maternity	+38	+1	0	+26	+1	0
Total	+56	+14	0	+14	-6	0
Disability:						
Unisex rating	+4	+2	0	-26	-21	0
Full maternity	+20	—	0	+20	—	0
Total	+24	+2	0	-6	-21	0
Automobile insurance	-20	0	0	+37	0	0
Individual annuities	+6	+6	+6	-6	-6	-6

¹ Not available.

3. Extrapolating from individual effects to totals of insurance in force, we project the following total annual dollar impact on individual insurance policies:

[Dollars in millions]

Type of insurance	Increase (+) or decrease (-)	
	Aggregate annual cost impact on men	Aggregate annual cost impact on women
Life insurance	-\$360	+360
Health insurance:		
Medical expense:		
Unisex rating	+69	-69
Full maternity	+82	+85
Total	+151	+16
Disability:		
Unisex rating	+37	-37
Full maternity	+57	+7
Total	+94	-30
Automobile insurance	-700	+700

4. The impact on pension plans would most likely be to mandate benefit increases to women under defined contribution type plans, and to men in certain circumstances under defined benefit type plans. It is not clear to us whether men or women would gain more in pension benefits from S. 372. The Department of Labor has estimated that if a "topping up" approach is used to accomplish unisex pension plans, men will receive 55 percent-95 percent of the increased benefits.

5. Implementation costs would be approximately \$1.3 billion. Most of these costs would be avoided if S. 372 affected new contracts only. The longer the period allowed from implementation, the lower the implementation costs.

6. The 90 day implementation period called for by this bill is not possible at any cost.

7. Clarification is needed in the bill's language with regard to three key areas: experience rating, use of sex distinct tables and data and the use of factors other than sex.

II. ANALYSIS OF ECONOMIC IMPACT OF S. 372

A. Overall Approach

Insurers do not now generally differentiate in insurance pricing or availability on the basis of race, color, religion, or national origin. Insurers also do not generally differentiate between the sexes as to the availability of insurance. The greatest effect of S. 372, therefore, would be the prohibition of differences between the sexes in the pricing of insurance, and we have confined our analysis to the economic impact of that prohibition and to the mandating of full maternity benefits in all health policies. In our view, the economic impacts of the other aspects of S. 372 are not significant.

There are four areas of major potential impact:

- (1) Changes in insurance cost to individuals;
- (2) "Ripple" effects on private insurance markets;
- (3) Financial effects on the insurers (both insurance companies and other insurers);
- (4) The administrative costs incurred in implementing S. 372.

We have examined these effects separately for four major types of insurance—life insurance, health insurance, and automobile insurance, and retirement insurance (i.e., pension plans).

B. Changes in Individual Insurance Costs

Much of the insurance coverage in this country is provided to individuals through group plans. For example, at least 85% of private hospital/medical insurance to those under age 65 is on a group basis. Very little automobile insurance is provided on a group basis. Except for group pension plans, the effect of S. 372 on the insurance costs paid directly by individuals covered under group plans or on the size of their benefits would be negligible, since most plans utilize unisex employee contributions and provide full maternity benefits. Consequently, our analysis of the

impact on individual pocketbooks pertains largely to insurance sold directly to individuals.

For some types of insurance, S. 372 would cause women to pay less and men more; for other types men would pay less and women more. The impact of S. 372 on any particular individual or family would vary widely according to the particular insurance coverage involved and the particular circumstances of the persons insured—in addition to their sex. Broadly, however, the average effects are summarized in the following table.

Type of insurance	Percent change in price					
	Increase (+) or decrease (—)					
	Male age 20	Male age 40	Male age 65	Female age 20	Female age 40	Female age 65
Life insurance	-2	-3	(¹)	+6	+11	(¹)
Health insurance: ²						
Medical expense:						
Unisex rating	+18	+13	0	-12	-7	0
Full maternity ³	+38	+1	0	+26	+1	0
Total	+56	+14	0	+14	-6	0
Disability:						
Unisex rating	+4	+2	0	-26	-21	0
Full maternity ³	+20	—	0	+20	—	0
Total	+24	+2	0	-6	-21	0
Automobile insurance ⁴	-20	0 ⁴	0	+37	0 ⁵	0
Individual annuities ⁶	+6	+6	+6	-6	-6	-6

¹ Relatively little life insurance is sold on an individual basis to people age 65. Percentage rate not available.

² The health insurance numbers are averages for in force contracts. The changes would be larger for many new policies.

³ This is the impact of requiring full maternity coverage (i.e., coverage for normal pregnancies and deliveries, as well as coverage for complications for pregnancy).

⁴ Effects shown are for men and women who are principal drivers of the insured car.

⁵ Some insurers now charge women between the ages of 30 and 64 who are the sole operators of their cars approximately 10% less than similarly situated men. The price of auto insurance for these women would increase slightly but the impact is difficult to predict.

⁶ Payments commencing at age 65, with refund features.

C. Effect on Pensions

1. *General Considerations.*—Most pension plans are provided through employer sponsorship. The provisions of ERISA, the terms of collective bargaining agreements and Section 4(c)(2) of S. 372 make it likely that most plans would have to comply with S. 372 by "topping up" the lower benefit in circumstances where benefits are not currently gender neutral. In general, therefore, periodic payments to women would increase under defined contribution plans. Under defined benefit plans, standard benefits at normal retirement age for similarly situated men and women are identical. However, benefits at early retirement and most optional forms of benefits (lump sum, spousal joint and survivor) are often *higher* for women. Therefore, in defined benefit plans with sex-differentiated option and early retirement factors, S. 372 would require increased payments to men retiring early or electing optional benefits.

2. *Cost Considerations.*—It is extremely difficult to estimate the cost of the increased benefits which would be required by S. 372. There are no comprehensive national statistics available concerning life annuities paid under defined contribution plans and optional and early retirement benefits paid under defined benefit plans. The effect of the bill on any particular plan could range from nothing to a significant dollar cost. A number of defined benefit pension plans already use "unisex" early retirement factors and option factors and would thus not be affected by the bill.

Many other defined benefit plans use sex-distinct factors and would incur additional costs as a result of this bill. Many defined contribution plans could reduce any adverse cost impact by dropping their life annuity option and offering only benefits payable for a fixed number of years or as a lump sum. This is the approach the State of Arizona took after an adverse decision in the *Norris* case. While Arizo-

na's decision avoided any additional cost, the plan participants lost a valuable option, that is, an income they could not outlive.

In the statement we filed last year with this Committee, we estimated that the cost of increased benefits in pension plans would be approximately \$5.5 billion per year. This figure was based in part upon an assumed average cost increase of 5.9 percent for defined benefit plans.

As a result of questions raised by one of our members, we have reviewed our calculations of that 5.9 percent increase as well as other aspects of pension cost increases. The 5.9 percent increase for defined benefit plans was derived from a 1976 report prepared by a task force of actuaries for the U.S. Department of Labor, in connection with a proposal by the Federal Equal Employment Opportunity Coordinating Council to require that equal pension benefits be paid to similarly situated males and females in all instances. Our review of that report revealed that two interpretations of table relating to our earlier cost estimate were possible. Using what we now know to be the intended interpretation of that study, the average cost increase for those defined benefit plans which would have to be changed as a result of S. 372 should be 3.1 percent not 5.9 percent. This change alone reduces the annual cost impact for pension plans to \$3.6 billion instead of \$5.5 billion as estimated earlier. Furthermore, since some defined benefit plans would not incur any cost increases under S. 372, the average effect on defined benefit plans would be less than 3.1 percent.

Other source figures used in our original calculation have been revised since that time and some new estimates have been made by other parties investigating the probable cost increases for pension plans. While the Academy hasn't reviewed all of the available data, our preliminary calculations suggest that our original method using some revised assumption could produce an increase in pension costs of less than \$2.5 billion per year.

Finally, we have reviewed the Department of Labor (DOL) study which assumes topping up all benefits for current retirees as well as active participants. This study indicates an additional annual cost of \$1.2 to \$1.7 billion dollars. Although we have not examined the DOL study in detail, after a preliminary review we conclude that its estimate of these cost increases is reasonable.

When considering the impact of S. 372 on pension plans, several points merit reflection:

a. Some plans may be able to reduce any compliance costs by simply dropping options which involve sex-differentiated factors.

b. The impact of S. 372 would vary widely from plan to plan. For some plans, such as those which are already completely sex-neutral (including options), there would be no cost. For many others, the cost would be small. On the other hand, some plans could be seriously affected. For example, a former New York superintendent of insurance has reported that such legislation would have a serious financial affect on the liabilities of public employee plans in New York State.

c. The fact that most pension participants are covered by defined benefit plans suggests that this legislation would increase the current proportion of total pension benefits which are paid to men. For example, the Department of Labor study concluded that between 59 percent and 95 percent of the increased benefits would go to men. On the other hand, sex neutral pricing would benefit women in the relatively new, but potentially large Individual Retirement Annuity system.

D. Administrative Implementation Costs

We consider here the costs involved in such activities as establishing "unisex" rates, amending insurance policies and contracts, changing computer programs and other systems and procedures, and recalculating benefits where necessary. The administrative cost impact depends very heavily on the time frame mandated for implementation. The 90-day implementation period called for by S. 372 is not feasible in view of the amount of internal work insurers would have to perform and the extensive state regulatory filings required. A longer implementation period would allow the changes for new contracts to be made largely in the context of normal product undating cycles. We have analyzed in our report the approximate administrative cost for a timetable midway between the impossibly short (90-day) and the low-impact long (2-3 years) lag between passage of the bill and its effective date. These costs are summarized as follows:

Type of insurance	Millions
Life insurance	\$870
Health insurance	200
Casualty and property insurance	75

Retirement plans.....	Millions \$200
Total costs.....	1,345

The retroactive features of the bill generate much of the administrative implementation costs, since those features require revisions to millions of outstanding insurance policies and contracts.

E. Marketplace Effects

The impacts of S. 372 on insurance markets are very difficult to predict and impossible to quantify precisely. Mandated changes in pricing practices often have unexpected effects, and, although these effects are not entirely quantifiable, they are nonetheless potentially very significant and worth of consideration. Here are some of the more important possible effects, summarized very briefly:

1. An increase in the average price of insurance in general, as insurers are forced to take on the additional risk that the sex distribution of those insured will be different from what is assumed in pricing.

2. Increased emphasis on selling insurance to the overpriced risks, along with possible steps to avoid selling insurance to risks that are known to be relatively underpriced.

3. Increased regulatory efforts and costs to assure equal availability of coverage, especially to those for whom insurance prices are reduced below their true cost.

4. The search for new classification factors or product modifications, which may have the effect of differentiating risks by sex.

5. Increases in premium rates for insurance contracts already in force may cause problems for individual consumers who have considered these premiums fixed and guaranteed. These rate guarantees may be important to the operation of other agreement, such as wills, divorce agreements, business agreements and employee benefit plans.

6. The discouraging of individual members of the gender with a low expectation of incurring a claim from purchasing insurance. For example, a 20 year old male considering the purchase of medical expense insurance might find a \$500 premium for a policy with sex distinct pricing increased to \$780 under unisex pricing and full maternity coverage. He might well consider the price unacceptable, particularly since the maternity coverage is valueless to him.

F. Financial Effects on Insurers

It is important to note that the "insurers" affected by S. 372 include not only private insurance companies but also organizations which "self-insure," through specially established trust funds or other means.

Among others, "insurers" in the context include various levels of government—federal, state, and local—and a variety of other self-insurers, in many cases pension or welfare funds established through collective bargaining agreements.

While S. 372 allows for changes in prices, it also stipulates that benefits may be increased but may not be decreased. This stipulation could have particularly serious adverse consequences to the insurers of retirement plans—not just insurance companies but also all other "insurers." The extra money required to increase retirement benefits to men or women, depending on plan specifics, would have to come from somewhere—additional appropriations in the case of many pension plans for government employees, additional contributions from employer or their employees in the case of private sector plans, etc.

Also, mandated increases under some annuity and insurance contracts will not be recoverable through premium increases. These include the cost of increasing payments to women under annuity contracts already paying monthly benefits and increasing insurance benefits for men under paid up insurance contract. (For example, a woman who purchased a single premium life annuity in 1982 would have her monthly benefits increased by this bill. There will be, however, no further premiums due under this contract.)

Conclusions

From our analysis of this particular legislation, we draw several general conclusions:

1. S. 372 would have a significant economic impact if enacted.

2. The effect on individual insurance consumers would differ according to their individual circumstances and according to the type of insurance coverage involved. On balance, it appears that women as a group would pay more for insurance (life, health, and automobile) if S. 372 were enacted.

3. S. 372 will mandate increases in pension benefits. Under defined contribution pension plans, women's benefits would increase; under most defined benefit plans, early retirement benefits and optional forms of benefits for men would increase.

4. The 90-day implementation period is not possible. The longer the implementation period, the smaller would be the additional administrative costs.

5. Much of the administrative costs could be avoided by having S. 372 affect only insurance contracts issued or renewed on or after the act's effective date.

III. AMBIGUITIES IN THE LANGUAGE OF THE BILL

1. *Experience Rating*

Under Section 4(a), a group of persons may not be charged different rates on the basis of sex. Further, Section 4(c), regarding in-force contracts, prohibits the use of premiums which are based directly or indirectly on the sex of the insured. We believe that the intent of these sections needs to be clarified if lengthy litigation is to be avoided.

If an insurer sells disability or medical insurance through voluntary enrollment to members of a plumbers union and a nurses association, will the insurer be allowed to charge different renewal premiums to each of these groups based on their actual claims experience? Could the insurer charge different initial premiums based on anticipated experience? In other words, would the use of experience rating by group in these instances be in violation of the intent of S. 372? And would this question be answered differently for a group which is composed of 100 percent one sex, 90 percent one sex, 75 percent one sex, or 51 percent one sex?

If experience rating is not allowed where it indirectly reflects sex-based cost differences, one would be faced with the problems of determining when experience rating reflected the impact of sex and how to eliminate that impact. For example, would one initially assume that different costs for plumbers as opposed to nurses at least partially reflected sex distribution differences until proven otherwise? If so, how would one determine the impact of the sex difference in contrast to other factors, especially if information regarding the sex of each insured was not available or its collection prohibited? Since cost differences also arise because of age, occupational hazard, geographic differences, etc. the determination of the impact of each of these variables would be involved. This would be highly impractical if not impossible, even where class information was available.

In summary, it is difficult for us to envision a practical system for removing the impact of sex when utilizing "experience rating." Therefore, it seems that the practical solution is to either: (1) allow experience rating, recognizing its potential for reflecting sex based cost differences in insurance pricing, or (2) disallow experience rating altogether.

If experience rating is permitted, sex based discounts will be available through group affiliation, e.g., a life insurance plan available to only the League of Women's Voters could offer low premiums based on the favorable mortality rates expected from its predominately female membership.

Prohibiting experience rating would threaten and possibly eliminate private insurance which contains provisions for premium adjustments or dividends based on emerging experience. Both group and individual plans would be affected, since many of these plans rely on periodic rate revisions based on actual and projected experience to cope with inflation and other factors affecting experience. Further, large groups with better-than-average costs (because of sex, age, occupation or other differences) would have a significant financial incentive to self-insure, if this would avoid paying premiums based on average cost.

2. *Use of Sex Distinct Tables and Data*

The bill needs clarification regarding the use of sex distinct data in the determination of unisex benefits and prices. The current wording might be interpreted as prohibiting the use of sex distinct data. For example, is it intended that actuaries be prohibited from taking sex distribution into account in determining adequate funding for a defined benefit pension plan, determining the life income benefits under a defined contribution pension plan, or setting premiums under a group medical expense plan? Sex distinct data is often useful to actuaries responsible for the sound operation of pension and insurance plans, even when those plans utilize unisex price and benefit structures.

3. *Use of Factors Other Than Sex*

S. 372 requires that no insurer shall refuse to insure or treat applicants differently with regard to terms, benefits or conditions on the basis of sex. Clarification is

needed to avoid misunderstanding regarding differentiation based on factors other than sex which have a disparate impact by sex. When preparing our economic impact study, we assumed that such classifications would be permitted so long as they were applied consistently to individual men and women. However, proponents of this bill have cited occupational (homemakers) and financial (policy size) classifications as discriminatory and as reasons for the enactment of bills similar to S. 372.

IV. COMMENTS ON VARIOUS STATEMENTS

We have seen various statements regarding this bill which we believe should be challenged. The most important of these are justifications for rejecting sex-distinct pricing which, if accepted at face value, would invalidate many additional important pricing variables such as age, occupation, health and smoking habits. For example:

1. *Overlap Theory*

The "overlap theory" states that men and women aged 65 should be treated identically with respect to contributions (premiums) and benefits because 86 percent of the women can be paired with 85 percent of the men by date of death.

Statistically, such a matching is meaningless, but more importantly this argument could be used to invalidate virtually all premium differentials (e.g., by age or smoking habits) where some overlap may be far in excess of 85 percent. For example, a group of 64 year old men could be matched by date of death with a group of 65 year old men with an overlap of well over 95 percent. Does this mean that it is unfair to pay lower benefits to men choosing early retirement?

Similarly, suppose a study of fatal lung cancers incidence showed a 5 percent rate for smokers and a 1 percent rate for nonsmokers. Would the fact that we could pair 96 percent of the smokers and nonsmokers with regard to lung cancer make it appropriate to charge them different premium rates for policies covering lung cancer deaths?

The degree of overlap in the experience of two groups, does not in itself, tell us anything about the relative cost of providing an insurance or annuity benefit to each of them.

2. *Controllability*

Some parties interested in this legislation have argued that insureds have no control over their biological sex and therefore sex should not be used as a rating factor. Yet many other important and commonly accepted rating factors, such as age and some health problems, are also immutable and beyond the control of the insured.

3. *Class Treatment*

Some object to sex-based pricing, arguing that it treats women as a class rather than as individuals. Insurance by its nature deals with events which cannot be predicted on an individual basis and must, therefore, be priced on the basis of group averages and similarly situated risks. For example, we cannot know that a particular 80-year-old man will die before a particular 50-year-old man. Our experience with groups of 80-year-old men and with groups of 50-year-old men has, however, convinced us that it would be unwise to offer life insurance to members of these separate groups at the same premium.

The process of risk classification often does involve the individualized assessment of risk. In assessing loss expectation for pricing purposes, an insurer looks to each individual's own risk characteristics. This can include, where pertinent, age, sex, occupation, health, avocations, location of residence, and smoking habits. The use of sex in this context involves no greater or lesser use of class versus individual treatment than the use of the other factors set out above.

OVERVIEW

Congress, the courts, and the public must at some point decide what are socially fair practices in the context of insurance. There are no objective tests which can differentiate with certainty an individual's insurance risk from that of a group with similar risk characteristics. It is precisely this uncertainty that leads to the need for insurance. Therefore, some aspects of fair practices applicable in other contexts may not be appropriate or possible in the insurance context.

It is generally the position of the actuarial profession that insured individuals are treated fairly if they are charged prices which reflect the value of the risks they transfer to the insurance pool—not simply as a matter of theoretical preference but as an important condition to the sound operation of insurance programs. Determining the value of the risks transferred necessarily involves the use of averages and

classification variables, making the use of averages and class groupings essential to insurance. Consideration of what is fair or unfair in insurance should take place, within that conceptual framework.

APPENDIX A.—BACKGROUND INFORMATION ON THE AMERICAN ACADEMY OF ACTUARIES

The American Academy of Actuaries is a professional association of actuaries which was formed in 1965 to bring together into one organization all qualified actuaries in the United States and to seek accreditation and greater public recognition for the profession. The Academy includes members of three founding organizations—the Casualty Actuarial Society, the Conference of Actuaries in Public Practice, and the Society of Actuaries.

The Academy serves the entire profession. Its main focus is the social, economic, and public policy environment in which the actuarial profession functions. Its primary activities include liaison with federal and state governments, relations with other professions, public information about the actuarial profession and issues that affect it, and the development of standards of professional conduct and practice.

Over 7,000 actuaries in all areas of specialization belong to the Academy. These members are employed by insurance companies, consulting actuarial firms, government, academic institutions, and a growing number of industries. Actuarial science involves the evaluations of the probabilities and financial impact that uncertain future events—birth, marriage, sickness, accident, retirement, and death—have on insurance and other benefit plans.

Membership requirements can be summarized under two broad headings: education and experience. At present, the education requirements can be satisfied either by passing certain professional examinations sponsored by the Casualty Actuarial Society or the Society of Actuaries; or by becoming an enrolled actuary under the Employees Retirement Income Security Act of 1974 (ERISA). The experience requirement consists of three years of responsible actuarial work.

APPENDIX B.—COMMITTEE ON RISK CLASSIFICATION

This Committee has the responsibility for keeping the membership of the Academy advised of major developments relating to risk classification that affect retirement plans, welfare plans and insurance, both governmental and private. It may also conduct or sponsor research on issues related to risk classification. It will also prepare reports, as appropriate, on such issues for dissemination to the membership and for submission to appropriate organizations, both governmental and private.

The CHAIRMAN. That is a very perceptive conclusion, Mr. Knowles. There is more involved in it than just simply solely actuarial statistics.

Mr. KNOWLES. We understand that.

The CHAIRMAN. And you clearly do, and I appreciate your closing statement.

Mr. Grubbs.

Mr. GRUBBS. My testimony is my own and does not represent my employer or anybody else.

I urge Congress to pass S. 372 with certain modifications that are described in my testimony. To require nondiscrimination for all life insurance annuity and health insurance contract issues in the future would pose no major problems and create no losses for insurance companies. Some companies are still issuing life insurance and health insurance on a unisex basis, but application of the new nondiscrimination requirement to existing contracts would create problems of fairness and constitutionality and would create heavy financial burdens on insurance companies. Therefore, I recommend that the new standard not be applied to existing contracts.

The bill is ambiguous as to whether uninsured employee benefit plans are covered, and should be clarified. There is no argument to support the ambiguity.

Regarding equal benefits under employee benefit plans, to provide less retirement income to a person of one sex than another cannot be acceptable. I recommend legislation requiring equal benefit payments for similarly situated males and females, and in all instances under employee benefit plans with certain exceptions for retroactive plans that I describe.

Now, is it better to have this legislation of employee benefits under insurance law or under labor law? The best solution, it seems to me, is to clarify in this bill that an uninsured plan is not insurance, but then in either a separate section of this bill or a separate bill to amend title VII to clarify that unequal payments to similarly situated males and females are prohibited under all employee benefit plans.

Regarding retroactivity under pension plans, the equal benefit requirement under employee benefit plans should not apply to certain situations which would create difficulty, namely employees who have already retired or reached retirement age or who have terminated employment prior to the effective date; to differences which are attributable to individual insurance contracts have already been issued; to plans that have already been terminated or discontinued; and to discrimination that is required by existing Federal laws and regulations.

And further, I believe Congress should end discrimination that does directly result from IRS and PBGC regulations.

Thank you.

[The statement follows:]

STATEMENT OF DONALD S. GRUBBS, JR., F.S.A.

My name is Donald S. Grubbs, Jr. I am an actuary and am manager of the Washington Office of George B. Buck Consulting Actuaries, Inc. I am a Fellow of the Society of Actuaries. I am admitted to the Bar of the District of Columbia.

This testimony is my own and does not represent the views of my employer or any one except myself. It is presented in an effort to assist the Congress in understanding, improving and enacting the Non-Discrimination in Insurance Act.

I urge the Congress to pass the Non-Discrimination in Insurance Act, with modification to solve certain problems discussed in this testimony.

1. *Prospective Feasibility.*—It is entirely feasible to require nondiscrimination with respect to all life insurance, annuity and health insurance contracts issued in the future. This would pose no major problems and create no losses for insurance companies. I am not competent to testify with respect to automobile insurance or other forms of casualty insurance.

2. *Problems to Retroactive Applications.*—Application of the new nondiscrimination standard to contracts which are already outstanding would create problems of fairness and constitutionality and would create heavy financial burdens on insurance companies, as described below. Therefore I recommend that the new standard not be applied to existing contracts.

3. *Fairness of Retroactive Applications.*—Insurance companies have entered contracts with policyholders in prior years in accordance with all applicable laws, using contracts approved by state insurance authorities. The contracts, in some cases favoring males and in some cases favoring females, were entered without malice, in good faith, and in accordance with commonly accepted practices. It would be fundamentally unfair to alter such contracts at this point.

4. *Constitutionality of Retroactive Application.*—Requiring changes in existing contracts violates the insurer's right to substantive due process. If an act of Congress impairs a party's interest in a valid contract, this violates the Contract Clause of Article I, § 10 of the United States Constitution, as incorporated into the Due Process Clause of the Fifth Amendment. In such a case there must be a weighing of the purpose of the legislation, the extent to which the contract is impaired, and the extent to which the effects of the legislation were limited to achieve the goals of

Congress without impairing the underlying contract any more than necessary. The retroactive aspects of the bill would fail that test.

5. Financial Burdens of Retroactive Application.—Application of the nondiscrimination requirement to outstanding contracts would substantially increase the liabilities and prospective costs of insurance companies.

Some of the statements that have been made concerning the magnitude of the increase liabilities and costs have been seriously erroneous or misleading. My detailed analysis of the study by the Department of Labor, which has been previously submitted to this Committee for the record, shows that the study contains such substantial errors that the amounts of liabilities reported should be disregarded.

An office memorandum prepared by the New York Life Insurance Company states that enactment of this bill would increase New York Life's liabilities by 1.3 billion dollars and "would in fact make New York Life statutorily insolvent." The \$1.3 billion estimate appears reasonable, and I assume it to be correct, and this must be viewed as a very serious problem. But the conclusion reached is misleading. If faced with such a situation New York Life would undoubtedly take appropriate steps to solve the problem. It could, for example, reduce or eliminate entirely the estimated 0.7 billion dollars if plans to set aside to pay dividends next year, increasing the company's surplus by that amount. I do not mean to imply that New York Life's problems would not be serious, but any representation that it faces actual statutory insolvency would be misleading.

I have not had time to analyze other statements concerning the liabilities and costs. Although some of the statements are incorrect or misleading, there is no question but that the increases in liabilities and costs are large and pose serious problems for some companies.

Most of the increases in liabilities and costs would fall on mutual companies, where it would be paid for entirely by reduction in dividends to policyholders. The net effect would be that some males and some females would receive increased benefits, which would be paid for by decreased dividends to both males and females.

A significant minority of the increases in liability and cost would fall on stock companies, where it would ultimately be paid by stockholders.

There may be some instances where particular companies would become statutorily insolvent because of the increased liability.

While I oppose imposition of the new standards to outstanding contracts, in the event they are to be included, I recommend that the coverage be phased in. For example, during the first year after enactment the statute might apply to contracts issued after 1983, during the second year to contracts issued after 1980, during the third year to contracts issued after 1975, during the fourth year to contracts issued after 1970, and thereafter to all contracts. This phased-in approach would substantially relieve the financial problems of immediate retroactive application.

6. Ambiguity Regarding Uninsured Employee Benefit Plans.—The bill is ambiguous as to whether uninsured employee benefit plans are covered. This ambiguity results because "insurance" is defined as an arrangement provided by an "insurer," while "insurer" is defined as a person who provides "insurance". Such circular definitions will certainly lead to a merry-go-round of litigation, with years of uncertainty about what is covered and millions of dollars spent on litigation which would be better spent on employee benefits. A valid argument can be made for covering uninsured plans or not covering them, but no responsible argument can be made for ambiguity. The bill should clearly define whether or not uninsured benefit plans are covered.

7. Equal Benefits Under Employee Benefit Plans.—Title VII of the Civil Rights Act provides:

"It shall be an unlawful employment practice for an employer—

"(1) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex or national origin."

Most federal courts that have ruled on the issue have determined that this requires equal payments of benefits to similarly situated males and females. Ultimately the Supreme Court will rule on this issue and the principal of equal benefits probably will be universally applied.

National social policy can permit no other result. The primary purpose of employee benefit plans is to meet human needs. The primary purpose of pension plans is to meet the need for retirement income. To provide less retirement income to a person of one sex than one of the other cannot be acceptable.

While the problems will ultimately be solved by courts without Congressional action, legislation ways could expedite equal treatment. It may take a long series of

court cases over a period of years to solve the problems otherwise. I therefore recommend legislation requiring equal benefit payments for similarly situated males and females in all instances under employee benefit plans.

8. *Legislation of Employee Benefits under Insurance Law or Labor Law.*—If equal benefits are to be required under employee benefit plans, there is a question of accomplishing this through insurance law or labor law. While legislation concerning insurance companies can appropriately govern insurance contracts issued in connection with employee benefits plans, it cannot adequately cope with the wide range of problems encountered in employee benefit plans. Most private pensions are not insured.

In *Manhart* the Supreme Court has already determined that Title VII applies to pension plans. Most federal courts confronted with the issue have determined that Title VII already requires equal payments under employee benefit plans in every situation where the issue has arisen. The most logical and helpful thing that Congress can do is to clarify the requirements of Title VII.

If an uninsured plan were deemed to be "insurance" under the current bill, it is not clear whether the "insurer" would be the plan administrator, the trustee, the named fiduciary, or the employer or other plan sponsor. If the employer under an uninsured plan is "insurer" and must bear the responsibility as such, will the employer bear no responsibility under an insured plan because it is not the "insurer"?

The best solution is to clarify that an uninsured plan does not constitute insurance. Then either a separate bill or a separate section of this bill should amend Title VII of the Civil Rights Act, which applies to both insured and uninsured plans, to clearly prohibit unequal payments to similarly situated males and females under all employee benefit plans.

9. *Retroactivity under Pension Plans.*—The problems of retroactivity under pension plans are different from the problems of retroactivity under insurance contracts. With exceptions noted below, there are no significant problems or significant costs in requiring equal monthly benefits for all employees who have not yet retired. Requiring equal benefits for those already retired would impose significant increases in liabilities upon employers; I do not recommend this.

In some instances where part or all of the benefit is provided under previously issued insurance contracts, unscrambling the effect of these prior policies would probably involve more actuarial, accounting and administrative expense than the amount of the adjustment. For example, under small profit sharing plans it is common to allow participants to elect that part of their account be applied to purchase individual life insurance contracts. In prior years males paid higher premiums than females. No required change in the insurance contracts will remedy the fact that the male's account balance in the remaining fund is less than that of a similarly situated female who purchased the same amount of insurance. But adjusting the account balance for one individual may require researching what the difference in premium would have been between the sexes under several insurance policies and tracing what the investment results for those amounts would have been over a period of 20 or more years.

Because of these and other problems, it is recommended that the equal benefit requirement of Title VII not apply to the following situations:

- (1) employees who reached normal retirement age, or actually retired, or terminated employment, prior to the effective date.
- (2) differences resulting from individual life insurance and annuity contracts issued prior to the effective date.
- (3) plans which were terminated or discontinued prior to the effective date.
- (4) any discrimination resulting from compliance with federal laws or regulations.

10. *Discrimination by Federal Agencies.*—Congress should also end discrimination in employee benefit plans which result directly from regulations of the Internal Revenue Service and the Pension Benefit Guaranty Corporation.

The CHAIRMAN. Mr. Grubbs, let me ask you this. You have heard the proposed compromise earlier, one that I thought we had worked out at one time with the insurance industry. If the bill was not retroactive—and by that I define those who are already retired—and if it allowed the insurance companies to plan rates and benefits for contracts in existence or future contracts, would that alleviate their cost problems?

Mr. GRUBBS. If it did not apply at all to existing contracts.

The CHAIRMAN. Not existing contracts, but those who are retired.

Mr. GRUBBS. We are talking about pension plans only in this case. If we eliminate the people who are already retired from coverage, this would pretty well solve the problems. As I described, there are a few other technical problems that it would be worth excluding.

The CHAIRMAN. Mr. Knowles, let me ask you this. You are an actuary. Why that fluctuating difference in the difference between men and women and their age groups? Why so close 50 years ago and so different now?

Mr. KNOWLES. I might refer you to a study I found interesting reported on in the American Journal of Epidemiology in 1982. In this study an effort was made to analyze sex-based mortality differences in the context of 16 other risk factors—religion, race, occupation, sleeping habits, life satisfaction indices, that sort of thing.

The conclusion of the study was that when these other factors are equalized, the difference between underlying male and female mortality widens slightly.

With regard to race, the study concluded that race was no longer a useful factor in the prediction of life expectancy or mortality.

The CHAIRMAN. It does not say why. It just reaches that conclusion.

Mr. KNOWLES. Right. And again, my job as an actuary in the pricing of an insurance policy, for example, is to make the most accurate assessment I can of the likely cost of providing benefits. I find that if I am able to use gender as one of my risk classification factors, I can do a better job of making that prediction.

The CHAIRMAN. What is the title of that article again?

Mr. KNOWLES. "The Sex Differential in Mortality Rates, Demographic and Behavioral Factors," and the citation is 115, American Journal of Epidemiology, pages 205 to 216.

The CHAIRMAN. Thank you. I have no other questions.

I appreciate your coming.

We will conclude with our last panel: Ms. Barbara Lautzenheiser, Mr. George Bernstein, Representative Warren Arthur, and Ms. Barbara Gibbons.

Ms. Lautzenheiser, go right ahead.

STATEMENTS OF BARBARA LAUTZENHEISER, SENIOR VICE PRESIDENT, PHOENIX MUTUAL LIFE INSURANCE CO., ACCOMPANIED BY DONA YOUNG AND JOAN HERMAN; GEORGE K. BERNSTEIN, ATTORNEY, REPRESENTING UNITED STATES FIDELITY AND GUARANTY CO., FIREMAN'S FUND INSURANCE CO., REPUBLIC INSURANCE CO., NATIONAL ASSOCIATION OF MUTUAL INSURANCE CO., AND THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM, ACCOMPANIED BY HARRY DUBRIN, CHAIRMAN, COMMITTEE ON LEGISLATION, NATIONAL COUNCIL ON TEACHER RETIREMENT; REPRESENTATIVE WARREN D. ARTHUR IV, OF SOUTH CAROLINA, PRESIDENT, NATIONAL CONFERENCE OF INSURANCE LEGISLATORS, ACCOMPANIED BY REPRESENTATIVE MARY SEYMOUR OF NORTH CAROLINA, CHAIRMAN OF THE STATE/FEDERAL RELATIONS COMMITTEE, AND SENATOR DON HALPERIN OF NEW YORK, VICE CHAIRMAN OF STATE/FEDERAL RELATIONS COMMITTEE; AND BARBARA GIBBONS, CONCERNED WOMEN FOR AMERICA

Ms. LAUTZENHEISER. My name is Barbara Lautzenheiser. I am a Fellow of the Society of Actuaries and president of that national organization, a member of the American Academy of Actuaries, and senior vice president of Phoenix Mutual Life Insurance Co. I am appearing on behalf of Phoenix Mutual Life Insurance Co. and myself, a concerned woman, and appreciate the opportunity to do so.

I am accompanied here today by Dona Young, assistant counsel, and Joan Herman, assistant actuary, also with Phoenix Mutual.

Sometimes in our zeal for what we deem right, we lose sight of the reality that comes from effecting that right. I firmly believe in equality of opportunity. Were it not for that I would not be here today. But reality forces me to accept the fact that equality of opportunity does not always lead to equality of result. Equal education does not lead to equal intelligence. Equal medical treatment does not lead to equal health. And equal insurance rates for men and women do not lead to equal financial security.

It is on these grounds I am opposed to S. 372. Its intent is constructive and laudable, but its effect is destructive and implausible. Its solution is appealingly simple but appallingly simplistic.

Right now, based on sex-distinct rates, auto and life insurance are less expensive for women—15 to 25 percent for life and 18 to 66 percent less for auto. With a unisex rate, a 23-year old single woman in Hartford could have her yearly auto insurance raised by as much as \$600, in Newark \$700 more, and in Philadelphia \$800. And 58 percent of the minority women in the labor force are single. So where does this bill hit the hardest? On the minority woman, on the insurance she must have. On the woman who has to work to support herself and her dependents because there is no one else to do so.

And what about life insurance? Over a 20-year period, a 25-year old nonsmoking woman would have to pay \$184 more for a 1-year term \$50,000 policy. A 35-year old \$784 more, and a 45-year old \$2,479 more. Women of all ages, single and married, would pay more. Again, where does this hit the hardest? On the 17 percent of American families which are headed by a single parent woman

who needs that life insurance to insure that her children will be taken care of.

Mandating that prices be equal for the sexes will not make costs any more equal than mandating that hot fudge sundaes have the same number of calories as celery, make the calories equal. The costs will be different regardless of the law and regardless of the prices. And when guarantees are made and an insurance company's first responsibility is to guarantee that there is enough money to pay the benefits, prices will have to be increased to guarantee these guarantees.

And everyone's taxes would increase. States and municipalities are severely affected by the legislation. The State of Connecticut would have to increase taxes by \$10 million per year, and 90 percent of those increased benefits would go to men. And you have already heard of even greater costs in New York City and California.

Yes, the insurance industry and employers would cope, but the American public, employees, buyers of employers' products, and taxpayers would pay, through reduced or eliminated pension benefits, higher costs of goods produced by these employers, and higher taxes—all to try to equalize something which just is not equal.

One interpretation of how the bill would be implemented requires that no one's benefit be decreased and no one's premiums be increased, yet benefits and premiums would have to be equal between the sexes. With this interpretation, the reserve increase for an insurance company would be from 30 percent to two times net worth. Twenty-four companies would become technically insolvent. I appreciate that comments like it would cause insolvency are not believed, but in some cases that would be the result.

Clearly, this is not a viable interpretation. The other interpretation, however, requires the increasing of premiums currently guaranteed in outstanding contracts. If your premium had been guaranteed and were suddenly increased, what would you do?

Yes; I care about women I care about people. And I care about the real means to equality, financial security. But this legislation alleged to do something for women instead does something to women. Its impact is higher prices for women, 15 to 25 percent for life for all women, and 18 to 66 percent more for many women for auto, especially negatively impacting the single woman who is sole support of herself and her dependents, with no offset to these higher prices for the vast majority of women, since nearly all, 85 percent of all health and 95 percent of all pension benefits are already provided by the employer at the same price for the same benefit to women and men.

Current insurance pricing is not discriminatory. Discriminatory practices consistently disadvantage. Current insurance prices provide an economic advantage for women in auto and life.

Passage of an amendment limiting this legislation to providing equal benefits for equal contributions in pensions and health to the 5 to 15 percent of women who do not already have them would maintain the advantages women already have in auto and life insurance.

This legislation as currently proposed discriminates against women. Doing something that only looks like it benefits women is the worst and most common form of sex discrimination in the

Nation today. This legislation may look like an orchid, but it smells like an onion.

[The statement follows:]

STATEMENT OF BARBARA J. LAUTZENHEISER, SENIOR VICE PRESIDENT, PHOENIX
MUTUAL LIFE INSURANCE CO.

My name is Barbara J. Lautzenheiser. I am a Fellow of the Society of Actuaries and President of that professional organization, a Member of the American Academy of Actuaries, and Senior Vice President of the Phoenix Mutual Life Insurance Company. I have worked in an actuarial capacity for over 22 years and have been heavily involved in sex discrimination issues in insurance for the last 10 of those years.

I am appearing on behalf of the Phoenix Mutual Life Insurance Company and myself, an informed, concerned woman and appreciate the opportunity to do so.

Sometimes in our zeal for what we deem right we lose sight of the reality resulting from effecting that right. I firmly believe in equality of opportunity. Were it not for that, I wouldn't have the opportunity to be here today. But reality forces me to accept the fact that equality of opportunity does not always lead to equality of result, and many times equality of result is not possible at all. Equal education does not lead to equal intelligence; equal medical treatment does not lead to equal health; and equal rates for men and women does not lead to equal financial security.

It's on these grounds I'm opposed to passage of S. 372. Its intent is constructive and laudable, but its effect is destructive and implausible. Its solution is appealingly simple, but appallingly simplistic.

I, too, am concerned about women—both those working inside and outside the home. I'm, concerned about their opportunities and their financial security, today and tomorrow. Elderly single women comprise 61 percent of all individuals 65 and over, and almost 40 percent of them live near or in poverty.¹ Seventy-two percent of the elderly poor are unmarried women.² It's not surprising they are more than a majority. In fact, it's confirmation of their greater longevity. And it's not surprising that they live in poverty. Their pensions and income almost entirely flow from their husbands' pensions, not their own. And, unfortunately, when the pension benefits under their husbands' plans were elected they were elected on their husbands' lives only. So when their husbands died they were left with only their spouses' benefits under Social Security on which to live.

But, that's changing today. Over 50 percent of all women are employed or currently seeking jobs.³ And the Labor Department estimates that by 1990, 95 percent of American women will be in the paid labor market. In all, nearly two-thirds of the women in the labor force in 1978 worked to support themselves and their families, or to supplement low family incomes.⁴ Seventeen percent of all American families are single parent families headed by a woman,⁵ and wholly dependent upon that woman for financial support.

Clearly women need and want financial security. And a major element of that financial security is insurance—the mechanism which provides financial security for unforeseen and unpredictable events in the individual woman's life—the mechanism which provides for the individual's unpredictability by the use of a large number of individuals' predictability—a large number of similar individuals' predictability. To price insurance fairly and equitably, the price is determined by charging the person according to her or his own characteristics—according to her or his own age, health, occupation, avocation—and sex, so that the individual's own expected experience is used for pricing as much as possible in a mechanism that must of necessity put people into groups—must of necessity fairly discriminate to put them into groups.

¹ Statement of James M. Hacking, Assistant Legislative Counsel, American Association of Retired Persons before the Committee on Commerce, Science and Transportation, United States Senate on S. 2204 on 15 July 1982.

² President's Commission on Pension Policy.

³ Statement of Dr. Quincalee Brown, Executive Director, American Association of University Women before the Committee on Commerce, Science and Transportation, United States Senate on S.2204, on 15 July 1982.

⁴ Economic Responsibilities of Working Women, U.S. Department of Labor, September 1979.

⁵ Statement of Dr. Mary W. Gary, Womens' Equity Action League before the Committee on Commerce, Science and Transportation, United State Senate on S. 2204, on 15 July 1982.

I find it ironic that a practice established to benefit women, i.e., the practice of having separate prices for women, is now being accused of being a detriment to women. As a former employer of mine once said—"no good deed goes unpunished"!

In the late 1800's women were charged more for their life insurance because maternity deaths were so high—as they still are in many countries with poor sanitation. However, as sanitation improved, so did womens' mortality until no difference in rates were charged. As the greater life expectancy of newborn baby girls grew from 1.2 more years than newborn baby boys in 1920 to 5.7 more years in 1950, no difference still was provided for in life insurance prices. Women tended to purchase lower amounts of insurance, hence the larger per policy issue costs were deemed to offset the lower mortality costs.

But, in the 50's recognizing that more women were working and would want to buy more life insurance, and following its long recognized policy of providing the lowest price possible, and even lower prices for any group it can identify as a lower cost group, the Phoenix Mutual Life Insurance Company, (we believe the first company to do so) began selling life insurance at lower rates to women. Similarly, Phoenix Mutual was one of the first two companies to give non-smoker discounts—as early as the mid 60's.

That's how competition in the insurance industry works. Any group which can be identified as having lower costs today which are expected to continue into the future, to a significant enough degree to justify keeping track of it separately, is given a cheaper price. Thus, the insurance consumer and the insurance company have both benefited—the insurance consumer through lower prices, reflecting more and more of her or his own individual characteristics—the insurance company, through more sales because of lower, more competitive, prices. By 1978, the life expectancy of a newborn baby girl had increased to 7.8 more years than the life expectancy of a newborn baby boy—clearly a significant difference. Women are a lower cost group, justifying lower, more competitive prices.

There are those who have said that we find a substitute for sex in pricing. I can assure you we have not been able to do so. We've known that "sex" has been a "suspect" rating characteristic for 9 years now—my first testimony to a governmental body on this issue was in 1974. Many studies have been done in an attempt to find a substitute. It clearly would have been easier to change to a new classification than to attempt to educate the entire nation on actuarial science, rating classifications and their appropriateness. I'm frequently not even capable of educating some in the industry on these aspects—let alone the nation. But no substitute, in spite of our attempts, has been found in those 9 years.

It may be fashionable to have unisex jeans, but science has not yet found any unisex genes. This genetic difference at birth has a lifetime impact. The genetic difference shows up even before the child is born. There are 150 baby boys conceived for every 100 baby girls. But, a 20-25 percent higher mortality prior to birth, prior to any socioeconomic impact, produces only 106 baby boys born for every 100 baby girls. Eight-five percent of all children born with genetic defects are male.⁶ Throughout life, females continue to live longer than males, as is the case in all mammals.

These genetic differences also lead to significant difference in why, how, and for how long men and women become disabled and hence lead to different claim costs for health and disability insurance—even excluding maternity disabilities. And similarly, in auto, for young men and women driving the same number of miles, women have fewer accidents and hence lesser costs.

Recognizing these differences in costs in the pricing of products was not to "get even" with some groups, not to unfairly discriminate against some groups, not to disadvantage some groups, but to fairly price insurance according to its costs, hence producing better rates to the consumer both because the rates are closer to the individual's own costs and because the better an insurance company can identify its costs, the smaller the margins it needs to build into its rates. If a cost factor is not, or cannot by federal mandate, be taken into consideration in pricing an insurance product—especially one with a lifetime rate guarantee such as in life and pension insurance—to assure that there are sufficient funds to pay the benefits, the only sound assumption with which to price is that all costs will be the higher costs. The result? Higher costs for all consumers and for some the non-availability of coverage because the price is too high to buy.

Those who argue that although the costs between the sexes are different today, the costs will equalize over time because of socioeconomic changes go against the best actuarial minds in the industry whose responsibility it is to assure that there

⁶Statement by Estelle Ramey, in "Ah, Yes, it's Survival of the Fittest", Milwaukee Journal, March 20, 1981.

are sufficient funds to pay benefits over 10, 20, even 100 years into the future. Their best actuarial judgments are that the differences will persist, and my best judgment is that they will widen even further.

Thus, a long term overall impact of this bill would be for all insurance prices to increase to the buying public.

However, insurance prices for many women won't wait that long. They'll increase right away. Health insurance for many women is provided through their or their husband's employer—at the same rate for men and women. Similarly, a large proportion (introduction to this bill says 95 percent—although I would suspect it's not quite that high) of employees, both in government and in private insurance, are already covered under defined benefit plans which provide equal monthly benefits to both sexes. Life and auto insurance, however, are generally purchased by the individual, i.e., they are not provided, at all in the case of auto, nor for a sufficient amount in the case of life insurance, by the employer. So they are purchased and paid for directly by the women.

Right now, based on sex distinct rates these two types of insurance, auto and life, are less expensive for women 15-25 percent less in the case of life insurance and 18-66 percent less in the case of auto insurance. With a unisex rate, a 23 year old single woman in Hartford could have her yearly auto insurance raised by as much as \$600, in Newark, \$700 more per year, in Philadelphia, \$800 more per year.

It's true these increased auto rates would only apply to single women. But, how many of these single women are there and who are they? According to a Labor Department report done in 1978, 40 percent of the women in the labor force were single. And 58 percent of the minority women in the labor force were single. So where does this bill hit the hardest—on the minority woman—on the insurance she must have, auto insurance—on the woman who has to work to support herself and her dependents because there's no one else to do so.

And what about life insurance? Over a 20 year period, 25 year old non-smoking woman would have to pay \$184 more for a one year term, \$50,000 policy, than she now would pay. A 35 year old would pay \$784 more, a 45 year old \$2,479 more. Over a 15 year period, a 55 year old non-smoking woman would pay \$3,854 more than she now would pay. Women of all ages, single and married would pay more. Again, where does this hit the hardest—on the 17 percent of American families which are single parent families headed by a woman who needs that life insurance on herself to assure that her children will be taken care of—and on the nearly 2/3's of women in the work force who work to support themselves and their families or to supplement low family income, whose families, if they died without life insurance, could not financially survive. I mentioned earlier that my first testimony on the subject was 9 years ago. As I left the hearing room that day a black woman turned to me and said "Black women were finally able to afford the life insurance they really need, and now they're going to take it away from us".

The difficulty with this legislation is it addresses the "symptoms" instead of the "disease". The "disease" is the one I identified as the intent of this legislation—the financial security for women and the part insurance plays in providing for the uncertain and unforeseen events of the financial security. The "disease" can be seen by synthesizing the testimony of the proponents of this bill.

Availability of coverage is expressed as a "symptom", but it's not even a real "symptom". The insurance industry has repeatedly, both by endorsement of model state regulation and more importantly by actual practice, shown that all forms of insurance are equally available to men and women. No—every company doesn't carry every form of insurance. For example, homemakers' disability insurance is not sold by every insurance company. The market for homemakers' disability insurance is not large enough, i.e., there are not enough buyers for this coverage for every insurance company to carry it. But, those who do carry it, make it equally available to men and women. Not every company even carries disability income insurance in general—to homemakers or any other occupations. But it is offered, in the companies in which it is offered, to men and women equally.

Price is expressed as a concern, as being too high for the coverage which now is more for women than men, but as not being low enough for the coverage that now is less for women than for men. This legislation merely "cuts the baby in half" making future prices lower in some cases, but higher in a larger number of cases.

By far, the majority of the initial testimony on this legislation, as well as the court cases cited, deals with the concern of equal monthly pension benefits, lobbied for (not surprisingly) by the group who doesn't have them, i.e., the 5 percent of employees under pension plans referred to in the Congressional Record as not already having defined benefit plans and hence not having equal monthly pension benefits.

The President's Commission on Pension Policy reports that only 39 percent of all women in the work force are covered by pension plans. Thus, a major thrust of the proponents of this legislation would advantage only 5 percent of 39 percent or 2 percent of working women. This legislation would be issuing a "bandaid" for a "diabetic" condition. Although 2 percent of the women would benefit from higher monthly pension benefits, the other 98 percent would suffer by increased auto insurance—a necessity for virtually all women, working as well as non working, and increased life insurance—a necessity for those women whose earnings are essential for the family support. And the "diabetic" condition? It's insufficient pensions for all—men and women. And the "bandaid" of this legislation will not only alleviate the condition, it will aggravate it.

Mandating that pension prices be equal for the sexes will not make pension costs any more equal than would mandating that hot fudge sundaes have the same number of calories as celery, make the calories equal. I made a uni-calorie table once that made them equal. The hot fudge sundaes were great. But look at me now. My body didn't obey my uni-calorie law. And when Mother Nature breaks the law and makes women live longer than men, there is no recourse. The costs will be different regardless of the law and regardless of the prices. And as I have explained before when guarantees are made for life, as they are in life insurance and pensions, and an insurance company's first responsibility is the guarantee that money will be there when it's needed, prices will be increased to make sure this can be guaranteed.

Thus, pension prices for all—men and women—will go up, and hence employers' costs will go up, especially smaller employers' costs. Smaller employers are the employers now generally providing unequal monthly pension benefits because they're the least costly and most predictable pension plans available. Hence, these are the plans whose costs would increase.

Many pension plans would merely change to those which do not provide for lifetime benefits, but instead only provide benefits for a fixed period, thus eliminating a valuable pension right. However, this would allow employers once again to predetermine and control costs, while still providing equal benefits for the sexes.

In today's economy, any increased costs, no matter how minimal, are significant and these increases, coupled with the administrative costs necessary to implement the changes, could cause these smaller employers to reduce or eliminate their plans, as many did when ERISA was enacted. In an environment where Social Security is returning to more of a floor of protection, the need is for more private pensions, not fewer. Private pensions should be buttressed, not burdened.

Even if the higher costs do not affect the benefits of the pension plan, these costs will be built into these employers' products' costs, further adding to inflation and its consequent loss of jobs.

Thus, the impact of legislation, even if restricted to only requiring that future monthly pension benefits be the same regardless of sex, would have negative effects. But, this would be by far the least negative of the many impacts of this bill. Also requiring that monthly benefits be equalized for the sexes in pension benefits already purchased, would have an even more dramatic effect. Again, the impact would be especially severe on smaller employers who thought their costs were controllable and had been funded and who now would have to increase funding to raise monthly pension benefits for women to the men's level. The result? Blatant pointing out of the fact pension costs are higher for women (remember the bill can change prices but not costs) thus even possibly impacting women's jobs. Even more smaller pension plans would be terminated.

One of the major employers that would be impacted under this aspect of the legislation are the states and municipalities, many of which do not now provide equal monthly pension benefits. A recent crude estimate is that the State of Connecticut would have to increase taxes by a sufficient amount to provide \$10 million more per year to fund equal monthly benefits to current retirees and employees and 90 percent of these benefits would go to men. Al Lewis, Superintendent of Insurance for the State of New York, estimates that it would take \$2 billion in additional taxes to equalize pension benefits back to the date of the Manhart Supreme Court decision, the first such decision on similar pension cases.

Yes, the insurance industry and employers would cope, but the American public, employees, buyers of employers' products, and taxpayers would pay—through reduced pension benefits, elimination of pension benefits, elimination of valuable lifetime pension options, higher costs of goods produced by these employers and higher taxes.

Plans that terminated, as a result of this legislation, would have further negative impact of the Pension Benefit Guaranty Corporation's solvency, as well.

But, the impacts of the bill don't stop there—don't stop with the impact of the major concern of the proponents of the bill, i.e., equal monthly pension benefits. As I noted earlier, the bill requires life insurance and auto insurance to increase for many women, especially for those who need it most, the women who are sole supports of themselves and their dependents—with no offset in decreased costs in their health and pension benefits, the vast majority of which are already provided by employers on a sex neutral basis.

And the bill would apply to current life insurance contracts as well. One interpretation of how the bill would be implemented, if it remains applicable to current contracts, would require that no one's benefits be decreased and no one's premiums be increased, yet future payment of benefits and premiums would have to be equal between the sexes. This interpretation, outlined only recently, is currently being studied by insurance companies. Some companies have completed very rough estimates of these costs. Five such companies' estimate that if this interpretation were followed, the reserve increase would be 33 percent of net worth in one company's case, 50 percent of net worth in another company's case and 95 percent of net worth in another, but would be 30 percent more than net worth in another's company case and 70 percent more than net worth in yet another company's case. I appreciate that comments like "it would cause insolvency" are not believed—but in some cases that would be the result. These companies becoming insolvent would enter the state guarantee funds, which spread the insolvency costs to other insurers, further impairing the solvent companies' solvency. Those companies not becoming insolvent which were mutual companies, could make modifications in their dividend scales, but both the funds necessary to bring everyone's benefits to a maximum and to absorb other companies' insolvencies would dramatically increase policyholders' costs, further encouraging policyholders to surrender, again further impairing the companies' solvency.

Clearly, this is not a viable interpretation. The other interpretation, however, requires the increasing of premiums currently guaranteed in outstanding contracts to produce a "blended" unisex rate. If your premium had been guaranteed and were suddenly increased, what would you do? Well, I'd sue or cancel my policy, depending on how much money I had to fight the court case. How much money do women who already barely make enough to buy peanut butter and blue jeans have to fight a court case? Again, who benefits—not the women who need the insurance coverage. How does this bill help those women? How does this bill cure the "disease"?

The "disease", again, is the need for more pensions for all, and better vesting and participation for women in particular. The longer vesting and participation periods currently in pension plans more severely impact women because of their shorter working careers and their more frequent work breaks to rear families. Earlier vesting and participation periods would make pension plans more portable, enabling the employee to take her or his pension benefits along when she or he changes jobs—an increasing need in a mobile work force, especially when work breaks are not voluntary—for men or for women.

In summary, although this bill's intent is constructive and laudable, its impact is destructive and implausible. Instead of addressing the real need:

More pensions for all.

Earlier vesting and participation hence.

More women actually earning pension benefits on their own.

Better portability for all for a more mobile work force.

Its impact is if applicable only to future contracts higher prices for many women for auto insurance ranging from 18-66 percent; a for all women for life insurance ranging from 15-25 percent. Especially negatively impacting the single woman who is sole support of herself and her dependents: 40 percent of all working women are in this category and 58 percent of all working minority women are in this category.

No offset to these higher prices for a majority of women since health benefits are generally already provided by the employer at the same rates for men and women.

A high proportion (95 percent is stated in the Congressional Record introducing this bill) already have equal monthly pension benefits.

If additionally required to apply to future benefits and/or premiums for all contracts in force:

Insolvency or impairment of solvency of many life insurance companies.

Or increased premiums or decreased benefits for contracts whose premiums and benefits are guaranteed by insurance companies.

Increased prices for all because of costs of implementation and other companies' insolvencies which must be borne by solvent companies.

In addition, the requirements of equal monthly pension benefits (for the small proportion not now receiving them—5 percent according to the Congressional Record introducing this bill) would have additional impacts.

If required for only future contracts would—

Reduce some pensions because of increased costs, especially those of smaller employers.

Eliminate some pension plans, especially those of smaller employers.

Eliminate valuable lifetime options in some pension plans.

If required for all contracts in force would:

Reduce some pensions even further because of additional increased costs.

Eliminate even more pension plans.

Possibly further impair the Pension Benefit Guaranty Corporation's solvency.

Increase funding requirements for states and municipalities' pension plans and hence would increase state and local taxes to provide this funding of \$10 million per year estimated for the State of Connecticut—90 percent of these increased benefits will go to men and \$2 billion (including some back payments) for New York City and state plans.

At a maximum, this bill should be modified to address its initial and major purpose—that of providing equal monthly pension benefits to the small proportion of women who don't now have these benefits. When done on a future basis it still has negative impacts as outlined above, but these impacts are accomplishable without the devastating impacts that elimination of cost-based pricing would have on the future of insurance customer prices.

Don't kill a fly with a shot gun.

Do find a way to encourage rather than discourage private pension plans.

Do something that actually benefits women—a majority of women. Rather than something that only looks like it benefits women.

Doing something that only looks like it benefits women is the worst and most common form of sex discrimination we have in the nation today.

The CHAIRMAN. Do I understand, Mr. Bernstein, that you and Mr. Durbin are going to split your time?

Mr. BERNSTEIN. Yes. Mr. Durbin is representing the National Council on Teachers' Retirement, and inasmuch as there was not separate time, I did want to split it, so I am going to take less time.

Just to begin to set the record straight, I am sure the Senator knows that my clients have never been involved in any of the negotiations and have consistently on principle involved opposed this legislation from the beginning and still do.

At a recent House hearing on this bill a witness was asked how she could endorse a proposal that required a woman to pay more for auto insurance. She replied that for equality she would pay higher premiums. The camera woman at the hearing exclaimed, "Like hell I will."

Some women may want laws that cost most women more money, but they do not speak for a very broad constituency. Supporters call the bill women's rights and civil rights, but the bill hurts the very people it claims to benefit. Would anyone dare call a bill civil rights if it raised premiums for blacks?

The premise of S. 372 is that facts are irrelevant, and regardless of differences between men and women, civil rights logic demands identical treatment in insurance pricing. But civil rights legislation does not require foolishness. Congress has recognized that while men and women may be equal under law, they need not be treated identically for all purposes, and have exempted women from military registration. Is this wrong?

S. 372 ignores the distinction between fair discrimination, which is essential to insurance, and unfair discrimination, which is prohibited by every State law. That logic would also ban rates based on age, health, territory and type of structure.

Despite the denial of its sponsors, S. 372 supersedes State regulation of insurance and overturns laws in every State that require premiums to reflect actual experience.

And how will the bill hurt women? Women will pay \$700 million more a year for auto insurance and \$360 million more a year for life insurance. The vast majority of working women will take home less money in pension payments. Only 2 percent of all working women will receive as much as a penny added benefits. Women of childbearing years would be forced to pay more for health and disability insurance because of the requirement of pregnancy benefits.

What else is wrong with the bill? It is retroactive, applying to all existing policies regardless of when they were written. The cost of lowering men's premiums and raising women's cash render values will bankrupt many life insurance companies, large and small. The cost to employers of retroactively equalizing pensions will be over \$2 billion a year. In the private sector most of this cost will fall on smaller employers. And 80 percent of this windfall will go to men.

The cost to the New York State Teachers' Retirement System alone would be \$313 million, of which 80 percent would go to men. And prospectively, women in our system will lose \$5 million each year. And the pregnancy-type coverages will cost small businesses and individuals \$230 million a year.

I would just like to refer to the chart which shows the actual costs and an example basis of some of the high costs that women would suffer if this bill were passed to women in the districts of the committee members.

[The statement follows:]

STATEMENT OF GEORGE K. BERNSTEIN

I represent the United States Fidelity and Guaranty Company, Fireman's Fund Insurance Companies, the Republic Insurance Companies, the National Association of Mutual Insurance Companies, and the New York State Teachers' Retirement System in opposing S. 372, the Fair Insurance Practices act.*

At the recent House hearing on H.R. 100, the companion bill to S. 372, a witness favoring the legislation was asked how she could endorse a proposal that would require her and other women drivers to pay more for auto insurance. The witness replied that in the interest of equality, she would gladly pay the higher premiums.

An outraged camerawoman filming the hearing was heard to exclaim, "Like hell I will." This real life exchange puts S. 372 in perspective. A few women may be willing to advocate legislation that costs most women money, but they do not speak for a very broad constituency.

Although supporters characterize the bill as "women's rights" and "civil rights" legislation, the bill injures the very people it claims to benefit. It is unlikely that sponsors would dare call a bill "civil rights" legislation if it raised insurance rates for Blacks. Yet this bill raises women's insurance rates and invokes the mantle of civil rights for women. Nonsense!

As working women, homemakers, and others across America become aware of what is being advocated in their name, this Committee will be inundated with de-

*USF&G, Fireman's Fund and Republic are stock insurance companies selling property and casualty insurance throughout the United States.

National Association of Mutual Insurance Companies is a trade association representing 1,170 insurers that range in size from the largest automobile insurer in the United States to some of the smaller regional and local insurers.

New York State Teachers' Retirement System is a public retirement system organized under the New York State Education Law. It provides retirement benefits for school teachers employed by the public school districts of the State, and certain members of public universities and community colleges. It is one of the largest retirement systems in the country, including both public and private systems, with an active membership of over 190,000 and a retired population in excess of 50,000.

mands that S. 372 be defeated. If the impact on most women were understood, it is unlikely that many of the groups endorsing the bill could justify continued support.

S. 372 prohibits the use of gender based experience in ratemaking. In so doing, it rejects basic principles of insurance, establishes federal regulation of insurance, imposes billions of dollars in annual costs on individuals, employers and insurers throughout the United States, and is anti-competitive by sacrificing small insurers who will be unable to survive the legislation: All this would be done in the name of women's rights, yet incredibly, all but a relative handful of women will be penalized by the bill.

Ordinarily, legislation that would prohibit insurers from basing their premiums and benefits on actual losses and expenses would be dismissed as absurd—particularly when such practices are the essence of insurance and are required by state law, the forces of competition, and plain common sense. One of the many recent editorials criticizing S. 372 was particularly apt in characterizing it as "one of the silliest political whoop-ups in recent times."¹ So the Committee can appreciate how poorly this legislation is viewed in local communities, I attach as Exhibit A² a compilation of recent editorial comments.

Moreover, legislation that would effectively repeal the McCarran-Ferguson Act and overrule all state insurance laws requiring rates and benefits to be predicated on experience would be expected to receive little serious attention.

Unfortunately, the proponents of S. 372 have shown no interest in the principles of insurance, the nature of competition, the benefits of state regulation or how the bill is viewed back home. Too few legislators have looked behind the beguiling title of the bill to learn about its costs to private individuals and businesses.

It is particularly unfortunate to find well meaning legislators, caught up in their enthusiasm for equal rights, unable to distinguish between appropriate grievances based on sex, on the one hand, and the legitimate use by insurers of sex as a rating tool to reflect actual and incontrovertible differences between men and women and the very real costs of these differences, on the other.

Insurance ratemaking does not exist as a force to remedy inadequate employment opportunities for women or unequal salary levels. Nor is insurance ratemaking capable of redistributing income to assure that men and women have identical costs and income regardless of circumstance and exposure to risk.

Yet that is just what S.372 professes to accomplish. It not only fails, but it actually has the cruel effect of raising insurance costs for those very women who have significantly lower income than men. The bill parodies the equal rights it professes to advance.

Moreover, in the name of equal rights, S. 372 carries the valid concept of "one person—one vote" to the extreme of equating rights with characteristics. In so doing, it denigrates the very principle it espouses.

The premise of S. 372 is that facts are irrelevant, and that regardless of differences between men and women, civil rights logic demands identical treatment in insurance pricing. Even if we overlooked the error of treating insurance ratemaking as an extension of civil rights legislation, such legislation does not require blind application and absurd results.

Congress has recognized that even theoretical equality cannot be applied indiscriminately. Thus Congress, in exempting women from registration for military service, made a distinction as to equality and chose not to draft women. Congress recognized that women and men may be equal under law, but that they need not be treated identically for all purposes.

If Congress chooses to ignore the proven differences between men and women in life expectancy, health characteristics and driving experience, it may have to reopen the issue of whether women should be exposed to the same risks of battle as men. If Congress chooses to blindly ignore the differences between the sexes, as required by S. 372, perhaps those critics of E.R.A. who feared the advent of unisex toilets will have to be taken more seriously.

If S. 372 is really "civil rights" legislation, why has the bill exempted uninsured pension plans from its provisions? Uninsured plans cover almost twice as many employees as do insured plans, yet S. 372 fails to require that the so-called "Fair Insurance Practices" mandated on insured plans also apply to employees of uninsured plans. Apparently, even S. 372 applies the rules of sexual equality on a discriminatory basis if Congress is not prepared to treat insurance ratemaking as a civil rights issue for uninsured plans, it should not apply that fiction to insured plans.

¹ Dallas Morning News, Apr. 4, 1983.

² Exhibits A and B have been retained in the committee files.

Prohibiting the use of group treatment may be appropriate in voting, employment, and credit, but in establishing the cost of insurance, the ability to use group characteristics is essential. Insurance would never have developed if every driver had to be evaluated only on the basis of his or her own experience or if the price of annuities or life insurance could only be set after experience had developed through the death of the particular insured.

But that is the illogic of S. 372's denial to insurers of the ability to use grouping or classifications based on objective standards and proven statistics. The bill demonstrates either an ignorance of what insurance is all about or a willingness to subordinate a proven, equitable concept to a shortsighted political gambit.

Today's vogue may be to decry all differences attributable to sex. Tomorrow it may be age differentials in life insurance that are criticized or the use of territories in automobile insurance. Since not every driver in a high loss territory is involved in accidents, it could be argued that the use of territory as a rating factor is improper. This approach would result in a uniform statewide rate and give impetus to the argument that rate differentials among the various states should be eliminated. Few would yet admit to advocacy of a uniform national rate for insurance, but this would be the next step in the decline into absurdity represented by S. 372.

Under the anti-group rating principles of S. 372, is it a "Fair Insurance Practice" for owners of wooden houses as a group to pay more for fire insurance than those with brick structures? Why should waterfront homes be more expensive to insure under the Federal Flood Insurance Program than those some distances from the expected flood hazard? Why should owners of brick houses pay more for earthquake insurance than those with wood frame structures?

Although experience shows that, as a group, one type of house is more resistant to the insured hazard, this collective experience would have to be ignored under an S. 372 approach because every member of the higher priced classification does not suffer greater losses than every member of the lower priced group.

All classifications, by definition, involve drawing lines. Classifications are neither suspect nor invalid just because 100 percent of those within a class do not develop identical experience, or because some insureds in different classes develop identical experience.

To criticize classifications because overlap or underlap exists is to deny the validity of the most basic actuarial exercise. If an automobile, life or health insurance or annuity classification were to be prohibited because all women in the class do not have the same loss experience or because some of these women have the same loss experience as men who are separately classified, then one would have to question the use of age classifications in life insurance because all 50 year olds do not die at the same age, or conversely, because some 50 year olds and some 70 year olds die at the same time.

If sex is to be banned as a classification because individuals have no control over it and is deemed immutable, are not other factors that are beyond the control of the insured also suspect?

Individuals cannot control their age, so under the logic of S. 372, a 20 year old should pay the same rate for life insurance as a 70 year old.

Individuals cannot control their susceptibility to certain diseases, so under the logic of S. 372, a terminally ill leukemia victim should pay no more for life or health insurance than a healthy person.

Individuals who are unable to live within walking distance of their jobs and who have no access to public transportation would, under the logic of S. 372, be entitled to the same rate for automobile insurance as an otherwise similar individual who does not use a car to commute. This result would be particularly ironic under a bill whose advocates cite mileage as a prime determinant of auto rates.

Alcoholism is increasingly characterized as a disease and thus beyond the control of individuals who suffer from it. Under the logic of S. 372, and alcoholic driver would be entitled to the same auto insurance rate as a total abstainer.

As absurd as these examples appear, they are no more absurd today than the elimination of sex as a rating factor would have appeared several years ago. Moreover, they are exactly what will result if insurers are forced to abandon the essential use of group characteristics and statistics as required by S. 372.

Unlike other fields where cost is known when price is set, insurance requires projections into the future, and insurance classifications involve best effort attempts to group risks with similar characteristics in a manner that reflects experience and correlative expectations. These classifications, and the rate differentials reflected in them, are amended frequently to reflect new developments, and are subject to continued regulatory review.

The opposition to groupings of risk categories stems from generalizing that because insurance classifications involve discrimination and because discrimination is frowned on, it should be eliminated in insurance as well. But discrimination—differentiating among groups—is the very essence of insurance underwriting, ratemaking, coverage and benefits. Fair discrimination in these aspects of insurance, based on demonstrable evidence, is not only unobjectionable, it is desirable and necessary, and without it private insurance could not exist.

Every classification, in all insurance, whether based on sex, age, health, driving record, fire resistance, safety devices or employment hazards, involves discrimination. All premiums are predicated on discrimination, and without it, policyholders would pay the same rate regardless of their risk characteristics.

Insurance statutes have always recognized the nature of classifications and that discrimination is an integral part of insurance, and, accordingly, have used the phrase "unfair discrimination" to distinguish prohibited activities. This distinction between discrimination and unfair discrimination is essential to an understanding of insurance, but it is missing in S. 372, which attacks the very concept of classifications.

As a result, S. 372 would require insurers to violate both basic principles of insurance and state insurance laws, and would force insurers to redistribute premium costs in clear contradiction of actual loss experience. Proponents of S. 372 play down its impact on state regulation of insurance, but it is difficult to disguise a bill that rewrites the nature of insurance and substitutes a federal definition and regulatory standard in every state of the Union.

Nor can the direct impact of S. 372 on women policyholders and pensioners long be obscured. Women drivers will pay \$700 million a year more for auto insurance under S. 372. Women will pay \$360 million more a year for life insurance under S. 372. Even in health and disability insurance, any reduction in insurance costs to women of child bearing years will be more than offset by the increase in their costs because of the requirement of S. 372 that full pregnancy benefits be offered. In pensions and annuities, as well, only 2 percent of women workers will gain at all under S. 372, while the remaining women will receive no added benefits or will actually lose money.

Not only will women end up paying more than their fair share for insurance, but many of them may simply forgo such coverage and seek alternatives to insurance that are not overpriced. Adverse selection will occur as the poorer risks in the overpriced groups are the most likely to continue to purchase coverage. The resultant losses will, in turn, drive up rates and the cycle will intensify. In addition, as utilization of the private insurance mechanism decreases, there will be greater demand on social programs and the public sector to care for those who are unprotected by insurance.

But S. 372 goes even further in imposing new insurance costs on individuals, businesses and state and local governments. Not only does the bill prospectively shift costs arbitrarily between men and women by mandating that loss experience and life expectancy of the two sexes be ignored, but it also retroactively imposes billions of dollars in costs on corporate and public pension plans and on employers and insurance companies by lowering premiums and raising benefits on contracts already in effect.

At a time when our economy is already suffering, when many pension plans are underfunded and in serious danger, when IRS is being forced to grant an increasing number of waivers of pension plan funding requirements under ERISA, when the Pension Benefit Guaranty Corporation is known to be in financial difficulty, when there is almost universal agreement that ways must be found to reduce health insurance costs to employers, individuals and taxpayers generally, and when employers are desperately searching for reductions in the costs of doing business to avoid lay-offs and bring laid off employees back to work, it is incredible that legislation is being considered that would worsen each of these situations.

The annual cost S. 372 type legislation to pension plans, private and public, is now estimated by the American Academy of Actuaries to be somewhat over \$2 billion a year. Estimates by the U.S. Department of Labor range up to about \$1.7 billion, but this figure does not appear to include the costs to many public plans. If the history of cost projections involving the government and insurance is any guide, all current estimates will prove low.

In the area of private pensions, the unfunded liabilities imposed by S. 372 will bankrupt many of these plans. Washington may act as if the lower estimates of one to two billion dollars annually are not of real concern, but that much a year in added pension costs is an extraordinary amount for American industry to absorb without severe financial hardship. Such added costs to U.S. businesses will not only

be another obstacle to economic recovery, but will continue to inhibit our ability to compete effectively with other nations.

Significantly, most of the cost of S. 372 will fall on smaller employers who utilize the type of retirement plans—defined contribution plans—which will be hardest hit by the retroactive impact of the bill.

Compounding the impact of the bill, the Financial Accounting Standards Board has proposed a change in financial reporting requirements. Under it, pension plan liabilities will have to be carried on the balance sheet of the parent employer.

Even without this requirement, a number of corporations will be unable to meet the added pension obligations and will become insolvent, and a greater number will suffer significant loss of shareholders equity under S. 372. When the FASB requirement takes effect, additional corporations will become insolvent.

The retroactive impact of S. 372 will also cause the investment portfolios of most of these pension plans to suffer large losses as most pension plans carry the stock of other companies in their investment portfolios. Smaller companies will be the hardest hit since they will not have the financial wherewithal to make up the lost value in their pension portfolios.

In addition to the corporate impact, the loss to individuals not protected by the Pension Benefit Guaranty Corporation from the failure of their pension plans will be tragic. As to those covered by PBGC, it is unlikely that an already shaky PBGC has sufficient resources to make good on its responsibilities if legislation like S. 372 becomes law and a significant number of current pension plans are unable to meet their obligations. Is the federal government prepared to further increase the tax on employers to prop up PBGC against these increased obligations? The cost of propping up the PBGC under the weight of its additional financial responsibilities will impact most heavily on the very plans that are in the poorest financial condition.

With respect to public pension systems, currently hard pressed states and localities will be unable to afford the liabilities imposed by S. 372. In New York State, alone, the Superintendent of Insurance stated that such added unfunded liabilities would be \$2 billion for just the New York State and City teachers' and employees' retirement systems, and he advised that eliminating sex-based actuarial consideration could "bankrupt the state and its political subdivisions." The effect on New York City's precarious financial condition has nationwide implications, even beyond the possibility of default on its federally guaranteed loans.

The impact on life insurance companies could be equally devastating. Large and small insurers, forced to absorb billions of dollars in retroactively mandated costs of reduced men's premiums and increased women's cash surrender values on life insurance policies in force, and with concomitant obligations on existing annuity contracts, will suffer enormous reductions in surplus. Estimates of the retroactive cost of S. 372 on some 147 life insurers surveyed show a loss of some \$13.4 billion in surplus. Many insurers will not survive.

And despite the intent of S. 372, the vast bulk of these new costs will go to reduce men's premiums and increase men's benefits, with only a fraction of the costs going to benefit women. A strange way to implement so-called equal rights for women.

Little attention has been given to the anti-competitive impact of S. 372. Although even the larger life insurers will suffer significant drains on surplus and many of them will become impaired or insolvent under S. 372, it is the smaller insurers who are least likely to survive. If the purpose of the bill was to eliminate competition and concentrate markets in the hands of a few large insurers, the current language could not have been more effectively drafted.

Even if retroactivity were eliminated from the bill, the remaining provisions are inimical to the competitive well being of smaller insurers. Without the proven rate-making tool of sex based experience on which to predict costs, smaller insurers, with less surplus, will be more susceptible to impairment and insolvency because of the haphazard rating techniques to which they are relegated.

The cost to individuals and small businesses of the mandated pregnancy and related conditions coverage would also be significant—at least \$230 million a year. A man or woman purchasing a typical health insurance policy will pay at least an additional \$250 per year. Costly pregnancy coverage is already required under 1978 legislation for large employer groups, and the added costs forced on individuals and small businesses by S. 372 will be particularly hard felt at this time.

Not only will businesses and individuals object to the increased pregnancy costs, particularly those individuals who choose not to have children, but the market for such coverage can be expected to dry up, as shown by the experience in New York State. Since 1976, when New York mandated that individual policies contain pregnancy benefits, more than 50 of the 75 insurers then providing such coverage

stopped selling health insurance in the state and the remaining companies restricted their sales to those over the age of 40.

No insurer can provide its product below cost, and the expense of providing pregnancy related coverage becomes unaffordable in connection with today's rising health care costs, particularly as concerns those who have no need for pregnancy benefits.

The cost of the added pregnancy coverage is particularly relevant in light of experience under Social Security, Medicare, Medicaid and other insurance related legislation. Cost projections for social insurance coverages have always been grossly low, particularly in calculating the factor of induced costs.

With all of the foregoing costs, it is incredible that neither the committee nor the Congress has done any extensive study of the costs imposed by S. 372. Completion of the study by the General Accounting Office, requested by the Senate Labor Committee, would seem to be a minimum first step before any further consideration is given to S. 372.

If Congress has no interest in the costs of S. 372 to individuals, employers, insurers, and state and local governments, it should be concerned with the direct loss in revenue to the federal government. The added multi-billion dollar employer costs under the bill will be tax deductible, and together with any federal obligation incurred by the Pension Benefit Guaranty Corporation in the pension area, will produce a measurable drain on revenues.

The loss of insurer profits and the resulting loss of federal tax revenues caused by the retroactive impact of the bill will be significant, even if actual insolvencies are minimized. This loss of tax revenue will extend beyond life insurance of other lines where insurers restrict the sale of their products in the face of the artificial legislative constraints of S. 372.

Is the power of the women's groups seeking this legislation so great that all of the questions raised by S. 372 must be swept aside in the rush to indulge their agenda?

In considering just how bad a piece of legislation S. 372 is, a review of its specific effect on automobile insurance and public pension systems is useful.

AUTOMOBILE INSURANCE

The cost of S. 372 in auto insurance will not fall primarily on insurers, but rather on women policyholders, who will be denied the benefit of their better driving experience. Current auto insurance practices are fair, crediting young women with the cost savings that come from their safer driving, and it is S. 372 that would unfairly discriminate against women.

It is S. 372 that would force insurers to ignore actual experience and charge women \$700 million more each year. It is S. 372 that would require safer women drivers to subsidize more dangerous male drivers, particularly those under the age of 25.

How can the sponsors of S. 372 claim that it closes the gap between the earnings of men and women when it forces women, who earn less than men, to pay more of their lower earnings for auto insurance each year?

Women deserve the lower auto premiums they currently pay. Data developed by both insurance and non-insurance sources confirm that women have fewer and less serious driving accidents than men. Nevertheless, in imposing a \$700 million a year penalty on women, S. 372 would make believe these differences do not exist. A few basic and uncontroverted facts demonstrate the fairness of sex-based classifications in automobile insurance:

(1) Male drivers have almost one and one-half times as many accidents as female drivers.³

(2) Males under 25 years of age have more than one and one-half times as many accidents as young females according to California Insurance Department statistics.⁴ New York State motor vehicle data show young male drivers with more than twice the accidents of young females.⁵

(3) In number of claims, average loss per claim and average loss per car, young single males have significantly worse experience than young single female drivers in all three auto insurance coverages—liability, collision and comprehensive. The overall loss per car for these males is 56 percent higher than for females.⁶

³One hundred forty-three percent, Study of California Driving Performance, 1979, California Insurance Department.

⁴One hundred fifty-seven percent, *ibid.*

⁵Motor Vehicle Statistics, 1981, New York Department of Motor Vehicles.

⁶Insurance Services Office.

(4) Male drivers had a rate of more than six times as many major convictions as did female drivers, two times as many moving violations, five times as many non-moving violations, four times as many suspensions and revocations, and three times as many speeding violations.⁷

(5) Male drivers are involved in more serious accidents and, as shown in a study covering 17 years, in more than twice as many fatal accidents as females.⁸

(6) Even after breaking down the loss experience by miles driven, women had lower accident frequency than men for every mileage category.⁹

These are facts, not myths. These are hard statistics on which insurers risk their policyholders' surplus and their stockholders' equity. They are either guesswork nor prejudice, and are certainly not the product of some conspiracy by insurers to benefit men at the expense of women.

Sex-based automobile insurance classifications were actually supplied only after experience developed that demonstrated that women were safer drivers and less expensive to insure than men. Competition required that all insurers reward such favorable experience or lose business to other carriers who cut their rates for women and might have cornered the market for better drivers.

Even the most vocal advocates of S. 372 cannot demonstrate any anti-female bias in the current auto insurance rating system. It is S. 372 that, by prohibiting insurers from recognizing their safer driving experience, would unfairly discriminate against women by forcing them to pay \$700 million more a year.

Will women drivers throughout the country truly be pleased to pay these added dollars, particularly when a continuing complaint of the backers of S. 372 is that women already suffer from lower earnings than men? Have the groups in Washington spoken to the women who will have to pay for S. 372?

Even with respect to auto insurance, S. 372 has a retroactive effect, as companies would be required to lower male premiums on existing policies. As with life insurance, where the retroactive effect of the bill is far more severe, the constitutional implications of such contractual interference have received no serious consideration by the Committee.

Moreover, S. 372 ignores its impact on the overall operations of the auto insurance market. Legislation can mandate what it will, but as long as women have better accident experience than men and everyone knows it, the market will react accordingly. If women are overpriced because of S. 372 and men are underpriced, female drivers will be avidly sought and male drivers avoided. Underwriting decisions are made on the basis of real world statistics.

As insurers react to the replacement of cost based pricing with politically mandated rate-making, markets will dry up, insurance will become less available, and agents will be restricted in their ability to provide a product.

The Massachusetts auto insurance market shows what can be expected if S. 372 becomes law. In 1977, the Massachusetts insurance commissioner prohibited the use of sex-based auto insurance rates in the state. Since then, the market has deteriorated to the point where the coverage of almost one out of every two drivers has been forced into the residual market reinsurance facility. Ninety percent of the coverage of youthful male drivers finds its way into this facility. And with all this dislocation, neither the Massachusetts law nor S. 372 benefits women. Women in that state are paying more today for their insurance than they would pay if unisex rating were not in force.

A witness before this Committee has testified that the same result occurred in Michigan, and that women drivers are paying 127 percent to 327 percent more for insurance since unisex auto insurance rates were imposed in 1980.¹⁰

Often figures like the \$700 million that S. 372 will cost women drivers annually are so staggering that they are difficult to comprehend. Even the knowledge that individual women will pay increases in premiums of from 18 to 66 percent is not as compelling as the actual dollar amount that specific women will have to pay because of S. 372. Thus, I am attaching, as Exhibit B, charts prepared by the Insurance Services Office showing the actual impact on women drivers in 92 cities in 46 states throughout the United States.

⁷ Study of California Driving Performance, *supra*; Michigan Driver Statistics, 1980, Michigan Department of State.

⁸ Accident Facts, 1981, National Safety Council.

⁹ Effects of Exposure to Risk on Driving Record, 1973, U.S. Department of Transportation, California Driver Fact Book Facts, 1981, National Safety Council. See also the Insurance Services Office analysis, "Mileage is not a Valid Substitute for Gender in Determining Fair Insurance Rates", submitted to this Committee on Apr. 25, 1983.

¹⁰ Elaine Donnelly, Apr. 12, 1983.

The exhibit for each city shows a range of additional premiums that two categories of women, a 19 year old occasional operator and a 23 year old principal operator, would be forced to pay each year if S. 372 became law.

The Committee members may be particularly interested in the following examples, from that exhibit, of how much additional annual premiums women in their states would have to pay if S. 372 became law:

Portland, Oreg.....	\$359
Phoenix, Ariz.....	377
St. Louis, Mo.....	289
Wichita, Kans.....	233
Pierre, S. Dak.....	291
Seattle, Wash.....	277
Anchorage, Alaska.....	387
Milwaukee, Wis.....	312
Richmond Va.....	268
Charleston, S.C.....	288
New Orleans La.....	479
Louisville, Ky.....	263
Omaha, Nebr.....	232
Birmingham, Ala.....	332
Newark, N.J.....	674

As women constituents learn about these and other costs under S. 372, it is unlikely that the bill will continue to be viewed as women's rights legislation.

PUBLIC PENSION PLANS

Unlike auto insurance, where the primary cost of S. 372 would fall on the policyholders, in the pension area, it will be the plans, school districts and state and local governments that will have to fund the additional payments required by the bill.

The New York State Teachers' Retirement System ("System") provides a devastating example of how S. 372 impacts on local governments. The cost of S. 372 to the System would be \$313 million, not counting the massive administrative costs of recalculating benefits and charges for more than 240,000 members and annuitants.

Ironically, of this \$313 million, only \$66 million, or 21 percent would find its way to women. The bulk of the windfall mandated by S. 372—\$247 million—would go to male retirees.

To appreciate the cost to the System and to public pension plans, generally, and how the added monies required to be paid under S. 372 would be distributed, it is important to understand how the System and other state and local retirement systems operate.

Under the New York State Education Law, the New York State Teachers' Retirement System pays a "retirement allowance", which consists of a pension, and, in addition, for those members who have annuity contributions on deposit when they retire, an annuity. The purpose of both pensions and annuities is to guarantee that the retiree will have income for his or her lifetime. State law prohibits lump sum payments on retirement.

The pension portion of the retirement allowance, which in the System's plans represents 95 percent of all retirement allowances, is a defined benefit plan, based on a statutory formula that is entirely sex neutral. This pension is a percentage of the retiree's final average salary for each year of service. Prior to selection of survivor options, if any, the periodic pension would be identical for a man and a women retiring with the same history of service and salary.

The annuity portion of the retirement allowance, which represents only 5 percent of the retirement allowances paid by the System, is a defined contribution plan, and does factor in the sex of the retiree in calculating the periodic payments. The annual annuity is determined by dividing the accumulated contributions credited to the retiree, by the annuity value, which represents the anticipated longevity of the member and the anticipated interest to be earned on the accumulation. The anticipated longevity is determined from annuity mortality tables based on age and sex.

Under the annuity, at retirement, men and women with similar service backgrounds and contributions to the System have equal accumulated contributions and are entitled to equal total annuity benefits calculated on the basis of their respective longevity. But inasmuch as the life expectancy of a woman retiring from the System at age 60 is 3.3 years greater than a man's, the woman's equal lifetime annuity will have to last longer and must be spread out in smaller periodic payments.

There is nothing sexist, deceptive or unfair about the smaller periodic annuity payments to women. If they were to receive equal periodic payments on accumulations of equal value, their annuity would be exhausted before they died and they would live their final years with no annuity income.

To provide equal periodic annuity benefits to women over their full lifetime would require a gift, not a return on the accumulations they earned. It is such a gift—that in the case of a retirement pool of 100,000 men and 100,000 women, each receiving \$10,000 a year for life beginning at age 65, would amount to \$4.1 billion dollars—that S. 372 mandates. Not equality, not fairness, not a proper return on earnings, but a windfall.

If the concern of the sponsors is that older women do not have sufficient income, let them properly characterize the bill as providing charity. There is no basis, however, on which to claim that women have a right to more money than their accumulations properly earn.

In fact, while a relatively few women will receive some windfall under S. 372, because of its retroactive benefits, on a prospective unisex basis, women will lose money under the bill. Moreover, the major recipients of windfalls under S. 372 on both a retroactive and prospective basis would not even be the women whom the bill would assist.

The vast bulk of the retirement allowances in plans like the New York State Teachers' Retirement System are pensions, not annuities. As indicated, ninety-five percent of the System's retirement obligations are pensions and these already provide identical benefits to men and women. It is only with respect to the 5 percent of retirement allowances represented by annuities that women would receive any additional benefits because of S. 372.

With respect to both annuities and pensions, however, the retiree is entitled to choose among various survivor options. These options are in the nature of life insurance, guaranteeing the continuance of at least a portion of the retirement allowance to survivors, on the retiree's death. The cost of these options with respect to both pensions and annuities are actuarially computed based on the age and sex of the retiree and the beneficiary. Because of greater female longevity, a woman retiree pays less for a survivor option than a similarly situated man and has less money deducted from her pension or annuity than the man.

Today, all women in the System pay less for their survivor options than do similarly situated men. This is true of all retirement plans, whether they be defined benefit or defined contribution plans, where the survivor option is computed using sex as a factor. If sex is not currently used as a factor in the survivor option calculation, such benefit would cost men and women the same amount and S. 372 would have no impact whatsoever on such cost.

If sex is used as a factor in calculating the cost of survivor options, S. 372 would change this and require that the cost to a man of this more expensive survivor option be reduced to the level of a woman's survivor option. In none of these cases could a woman gain any amount under S. 372 and she can only pay more under the bill.

Inasmuch as only 5 percent of the System's retirement allowances are annuities, only within this 5 percent situation will women benefit from increased periodic payments. In all 100 percent of the retirement allowances provided, however, the survivor option costs for women will be increased, while the cost to men of these options will be reduced.

Thus, of the \$313 million that S. 372's retroactive provisions' will cost the System, almost 80 percent, \$247 million, will go to reduce the deductions for options purchased by male retirees and as a result, to increase the amount of retirement allowances the males receive.

Nor would S. 372 permit the System to avoid any of this cost by changing to so-called unisex tables by which the level of one sex's benefits and charges were brought even with those of the other sex. The full cost of \$313 million will fall on the System under the provisions of Section 4(c)(2) of the bill, which require the System to use the best table, male annuity levels on the one hand, and the lowest, female survivor option premiums on the other—to "top up" benefits.

The foregoing calculations by the System's actuaries involve no change in assumptions as to the particular options which might be chosen or the incidence of early retirement that might be encouraged by the enactment of S. 372. Incentives to early retirement and change in option selection do exist under S. 372, and the actuaries for the System have calculated that the \$313 million cost to the System could double.

The numbers may be different for other public and private retirement systems, but the principle and the impact will be the same. Retirement plans will be im-

paired under S. 372 as reserves that were originally established on the basis of anticipated lower periodic annuity payments to females and higher deductions from men's retirement allowances for survivor options prove inadequate. The reserve inadequacies will have to be funded or the plans will become insolvent, and to the extent that retirement plans survive to pay their obligations, it is men, not women, who will reap the vast majority of benefits required under S. 372.

In the case of public plans like the New York State Teachers' Retirement System, the resultant retroactive underfunding would add an immediate liability that would have to be paid by assessing already hard pressed school districts, locally funded community colleges and other participating employers, including the state of New York.

The Mayor of the City of New York has already testified before this Committee that the billion dollar cost of S. 372 to the New York City Employees' Retirement System will have to be paid for either by tax increases or reductions in vital services such as police or teachers.¹¹

The California Teachers Retirement System testified before this Committee that S. 372 would cost it \$2.6 billion.¹² Other public retirement systems are in the process of compiling their own data, but the information already received from only a portion of these systems shows unfunded liabilities from S. 372 of more than \$6 billion.

All of these liabilities would have to be paid by increased taxes or by reductions in services in the states and localities obligated to fund the retirement system.

If Congress chooses to overlook the failings of S. 372, it cannot ignore the fiscal impact of the bill. Public retirement systems and state and local governments cannot afford the cost of S. 372. If Congress believes that it is worthwhile public policy to require the payment of the extensive subsidies, primarily to men, called for by S. 372, it should also provide for the appropriations necessary to fund this new entitlement program.

Perhaps as federal taxpayers learn, first hand, the actual cost of the retroactive requirements of S. 372, there will be a greater incentive by Congress to weigh the real effects of the legislation against its high sounding title.

Even if the retroactive provisions of S. 372 were eliminated, it would still be bad legislation. On a prospective basis, S. 372 will actually reduce the amount of benefits which women will take home under pensions and annuities.

Almost 95 percent of current employees already receive their primary pension in the form of a unisex payment under a defined benefit plan. None of the women in this 95 percent group will gain a penny in normal retirement allowances under S. 372.

In 55 percent of these unisex defined benefit plans, the cost of joint and survivor options is also unisex based, so S. 372 will be of absolutely no benefit to women here either.

In 45 percent of these unisex defined benefit plans, however, the cost of joint and survivor benefits is based on the sex of the retiree or his or her beneficiary. In these 45 percent of defined benefit plans with sex based survivor options, the cost of these options today is less for women than for men.

S. 372 will change this and require increases in the costs to a woman retiree for a joint and survivor option. This will result in a decrease in the net amount that she receives as a retirement allowance.

In simple terms, S. 372 will take money out of the pockets of women retirees. Only 2 percent of working women in this country are covered under defined contribution plans where they could possibly receive any increase in annuity benefits under this bill. The remainder of working women covered by defined benefit plans will either gain nothing or actually lose money under S. 372.

If Congress accedes to the demands of the elite, non-representative group of women who stand to gain from S. 372, it will be at the expense of the rest of insurance purchasing women who not only will be forced to pay higher premiums for auto, life and health insurance but who also will receive less pension benefits—the very coverage where it is claimed that S. 372 will help them.

Actual numbers from the New York State Teachers' Retirement System demonstrate how S. 372 will take retirement money out of most women's pockets.

Active and retired women in the System will gain \$30 million prospectively on the 5 percent of their retirement allowances that are on a defined contribution basis. They will gain nothing on the 95 percent of the retirement allowances that are already on a unisex basis. They will, however, lose \$106 million on the joint and survi-

¹¹ Apr. 12, 1983.

¹² Apr. 12, 1983.

vor option portion of both the defined benefit and defined contribution plans for a total loss of \$76 million dollars.

Translated into the bread and butter terms that make a difference in paying bills, S. 372 will take \$5 million dollars out of the pockets of women retirees of the NYSTRS each and every year over their 15 year retired lifetime.

CONCLUSION

One must question whether the group supporting the legislation are fairly representing American women. It is unlikely that many women would endorse legislation that forces insurers to ignore experience and charge them an unnecessary \$700 million a year more for automobile insurance, \$360 million a year more for life insurance, increase the cost of much of their health care coverage, and reduce their pension income in the vast majority of cases where S. 372 will have any impact at all on pensions.

If supporters of S. 372 were truly acting in the interests of women, particularly the elderly women whose image they so frequently invoke, they would withdraw their support for the bill and urge its defeat. S. 372 turns the term "civil rights" on its head when it hurts the very group it purports to assist. It is time that Congress awoke to just what is going on.

The unjustified invocation of women's rights is but one of the fatal defects in S. 372: it would have disastrous economic impact; it is an unwarranted attack on insurers that prohibits the continued use of essential elements of the insurance process; it would change the very nature of insurance from a non-political, economic mechanism, it would supersede state insurance law by imposing federal regulation; and it would establish a shooting gallery of litigation that invites abuse by every claimant and lawyer seeking a federally mandated, insurer funded pot of gold.

States already regulate and prohibit unfair discrimination in ratemaking as well as in withholding coverage or denying appropriate benefits. A few states, in fact, have even enacted statutes prohibiting the use of sex in automobile ratemaking. While this latter legislation may be unwise, it is at least within the proper purview of the states to determine the standards for insurance regulation in their own jurisdictions.

Is Congress so satisfied with its ability to solve national problems of unemployment, economic stagnation, the environment, energy, defense, housing, social security and other federal responsibilities that it is prepared to expend its time and energy and taxpayers monies in taking over regulation of insurance from the states?

S. 372 has been condemned by almost all conversant with insurance including two of the most knowledgeable groups, the National Association of Insurance Commissioners and the Conference of Insurance Legislators. In addition to almost all insurers, they and other key groups, including the National Council on Teachers Retirement and the National Association of Insurance Women, oppose both the concept and content of S. 372 type legislation as unsound, undesirable systems. The National Governors Association, citing information that the potential cost of the legislation to state and local pension plans "could be in the billions of dollars," urged that action not be taken by Congress before "the fiscal and other effects" are known.

Despite testimony in 1981, 1982 and 1983 on the dangers and cost of this type of legislation, very few members of Congress are aware that S. 372 is so expensive a piece of legislation and that it does not even benefit women. Not a single study has been done by Congress on the costs of such legislation who will bear them, and who will really benefit. The backers admit that as far as they are concerned, the cost of the legislation is secondary to their view of social policy contained in the bill. Such policy seems more committed to announcing a victory for women's rights than achieving one.

S. 372 is not an equal rights bill for women. It is a bill that rewrites the insurance mechanism and, at great economic cost, provides excessive benefits to men and takes money out of women's pockets.

It should not be enacted.

The CHAIRMAN. Thank you.

Mr. Dubrin.

Mr. DUBRIN. Thank you, Senator Packwood.

I am here representing the National Council on Teacher's Retirement. And many of the observations that I would make were earli-

er made by Mr. Sheppach. But I would like to point out the following.

The report issued by the task force of the House of Representatives in 1978 identified over 6,600 public pension plans. Only 29 of those who responded to an inquiry that we sent out indicated cost of the bill in its present form in the neighborhood of \$4.8 billion, which is the figure that Mr. Sheppach referred to; and it is for this reason—that is, the retroactive or retrospective effect of the bill—that our association is in opposition.

We do so because its cost implications not only include the dollars that have been identified or are yet to be identified, but also because there would be, as has been stated in the insurance industry, an additional administrative cost which many of us are hardly in a position to absorb.

We also oppose the bill because of its preemption provision. We recognize that many of those States that have not adopted unisex tables have not done so because of existing litigation or because the preemption effects of the bill do not specifically overturn State laws or State constitutional provisions which essentially say there shall be no diminishment or impairment of retirement benefits once granted.

In such jurisdictions, use of best tables or topping up will be required unless debarred by Congress. Those in a litigation posture do not want these actions with respect to these proposals—or their actions, I should say, with respect to these proposals to be interpreted as an admission or in any way to make moot the issues in those cases.

Finally, I would say that there is no assurance that these bills, if enacted, would put an end to the litigations.

Thank you.

[The statement follows:]

STATEMENT OF HARRY DUBRIN, NATIONAL COUNCIL ON TEACHER RETIREMENT

I am appearing and testifying today as Chairman of the Legislative Committee of the National Council on Teacher Retirement. That organization represents 44 statewide retirement systems, most of which cover public school teachers exclusively, as well as 15 local or municipal teacher retirement systems located in the United States. For the reasons set forth hereunder, the Council is opposed to S. 372/H.R. 100.

It is important that we emphasize that our opposition to the bills is limited to that portion that mandates elimination of gender-based actuarial tables in calculating annuities, joint and survivor benefits, and other forms of insurance benefits as administered by members of the Council.

I am sure that the members of this Committee and its staff realize that, in most public pension systems, the basic pension benefit is equal for males and females. I am also sure that the Committee members and staff realize that a number of pension systems utilize gender-neutral tables in computing some, if not all, of their benefits. However, to the best of my knowledge, where gender-neutral tables have been adopted by public pension systems, most have had a prospective, and not retroactive or retrospective effect. Thus, the costs of making such changes were minimized. Others, such as the public pension systems of New York State, have been reluctant to initiate such changes because of a contractual or constitutional guarantee, which prevents such systems from diminishing a benefit once it has been granted. As a consequence, any change in benefits in such states has an immediate cost impact. It is important to emphasize the costs attributable to the proposals for, even though many argue that the likelihood of increased costs cannot stand in the way of assuring persons equality of treatment, the fact, simply stated, is that there is hardly a state or local municipality in this Country that is not facing a financial crisis and that, unlike the Federal government which can shift to future generations

its unfunded costs, most, if not all of the state and local municipalities are required to operate on a balanced budget. So, whether we like it or not, costs become a significant consideration. And, while we can also dispute each other's estimates of the costs, the fact is that every additional cost attributable to new Federal legislation means that the state and local municipalities have to cut back other programs to accommodate the new mandate. Section 4(c)(1)(B) of the bills makes it clear that any annuitant or other beneficiary shall have her/his benefits recalculated once the provisions of the bills are effective. Section 4(c)(2) of the bills provides that "the insurer may modify the premium and contribution rates and may increase but not decrease the periodic and lump sum payments under such existing contracts insofar as they are due after the effective date. * * *

In our judgment, the quoted provision guarantees an additional operating cost for every public (and private) annuity, pension and insurance program. In effect, it requires use of best tables; i.e., either male or female, whichever provides the higher benefit. The Actuary of the NEW YORK State Teachers' Retirement System has estimated that implementing this provision of S. 372 would cost the taxpayers of New York State an additional \$313 million. In a letter to Senators Hatfield and Packwood, dated March 24, 1983, the Director of the OREGON Public Employees' Retirement System, James L. McGoffin, indicated that, even though his System has adopted unisex actuarial tables, H.R. 100 (companion of S. 372) would increase the annual employer costs to offset an additional unfunded liability of between \$33-40 million. Other systems responding to a recent inquiry sent to its members by the National Council on Teacher Retirement, and as compiled in an independent study by the actuarial firm of Milliman & Robertson, Inc., indicate the following additionally costs they would incur if S. 372/H.R. 100 become law:

Plans (all are teachers unless otherwise indicated):		Millions
Alabama		\$71
California		2,600
Colorado (general)		24
Connecticut		18
Florida (general)		81
Georgia		103
Idaho (general)		7
Kentucky		60
Maryland (general)		20.5
Maryland		13.5
Michigan (general)		40
Minnesota		7.8
Mississippi (general)		15
New Jersey (general)		60
New York (general)	¹	200
New York	¹	313
North Carolina (general)		57
Ohio (general)		92
Ohio		112
Oklahoma		12.3
Oregon (general)		86
Pennsylvania (general)		296
Pennsylvania		460
South Carolina (general)		16
Texas		40
Virginia (general)		37.5
Washington (general)		40
Washington		35
Wisconsin (general)		15
Total		4,882.6

¹ These totals do not include the costs to the 5 New York City public pension plans.

Several of the responses indicated that the estimated costs did not include additional administrative expenses their systems would incur in executing any changes required by the proposed legislation.

I refer you to a comment made in the Minority Statement in the Report on the Fair Insurance Practices Act, released by the Committee on Commerce, Science and Transportation on December 1, 1982, and attributed to New York's former Superintendent of Insurance, Mr. Albert B. Lewis, to the effect that requiring use of gender-neutral tables, as proposed by S. 2204, introduced in the 97th Congress by Senator

Packwood, could result in a potential cost to all public pension systems of \$20 billion. This estimate, I presume, was based on an assumption that there might be retroactive adjustments to benefits paid in prior years. I mention these estimates to underscore to the members of this Committee the potential effect a bill of this type can have on just one sector of insurance.

We are also concerned that the aforementioned Report made representations to the effect that industry cost estimates were overstated because "they assume that the Equal Employment Opportunity Act does not require employees [sic] to provide equal individual benefits for equal individual contributions by employees to employer annuity, pension and retirement plans."

It seems to us that the clear import of that statement is that the additional costs would not be significant or burdensome because present law requires that employee benefit plans provide for "topping up" the benefits payable to the alleged "discriminated" sex for all benefits payable at the present time. Such a conclusion flies in the face of the express language of the United States Supreme Court in the case of *Los Angeles Department of Water & Power v. Manhart*, 435, U.S. 702. The Court in *Manhart* specifically held that the additional contributions made by women toward their annuities up until the date of the decision, were not to be refunded. On page 721 of the decision, the Court said "Consequently, the rules that apply to these funds should not be applied retroactively unless the legislature has plainly commanded that result", and goes on to say on page 722, "Although Title VII was enacted in 1964, this is apparently the first litigation challenging contribution differences based on valid actuarial tables. Retroactive liability could be devastating for a pension fund. The harm would fall, in large part, on innocent third parties. If, as the courts below apparently contemplated, the plaintiff's contributions are recovered from the pension fund, the administrators of the fund will be forced to meet unchanged obligations with diminished assets. If the reserve proves inadequate, either the expectations of all retired employees will be disappointed, or current employees will be forced to pay not only for their own future security, but also for the unanticipated reduction in the contributions of past employees."

The Supreme Court in *Manhart* also specifically rejected the concept of "topping up", which the Committee apparently believes is the present law. In footnote 36, on page 720 of the *Manhart* decision, the Court stated "Further doubt about the District Court's equitable sensitivity to the impact of a refund order is raised by the Court's decision to award the full difference between the contributions made by male employees and those made by female employees. This may give the victims of the discrimination more than their due. If an undifferentiated actuarial table had been employed in 1972, the contributions of women employees would no doubt have been lower than they were, but they would not have been as low as the contributions actually made by men in that period. The District Court should at least have considered ordering a refund of only the difference between contributions made by women and the contributions they would have made under an actuarially sound and nondiscriminatory plan."

It is obvious from these quotes that the conclusion expressed in the December 1, 1982 Committee Report was not the law of the land, as expressed by the Supreme Court of the United States and, therefore, industries' representations as to the proper costs were based on legitimate assumptions.

Explicit in the requirements of the proposed Act is that consideration of gender, in determining costs or benefits, shall be deemed an unlawful discriminatory action. This legislative mandate ignores reality. The use of gender in computing costs and benefits does not discriminate against females or males. In some cases, males have lower costs or benefits and, in some cases females have lower costs or benefits. Women receive a higher benefit when electing a joint and survivor option for their retirement plan, and pay a lower premium for automobile and life insurance. Men receive a higher benefit when they purchase an annuity. These reflect reliable statistics compiled over a long period of time. The issue is clearly not a "women's lib" or "men's lib" issue at all. Gender is a valid predictor of longevity and the pension and insurance industries are completely rational in the use of gender-based tables.

The basic concept of this proposal is falacious and, if Congress were to enact it, tremendous costs and administrative burdens would be imposed upon both industry and government. The entire proposal should be rejected. In any event, under no circumstances should a proposal be enacted which provides for "topping up" of benefits or for application to rights and obligations which exist at the time a bill is enacted. It should be prospective only, that is, apply to new rights and obligations.

The recent TEFRA legislation created tremendous burdens on the insurance, banking and pension industries, the cost of which will eventually be reflected in the

cost of the product. This proposal would totally dwarf the costs and burdens of TEFRA, all in the name of eliminating a discrimination which does not exist.

However, if, notwithstanding the needlessness of the legislation, it is nevertheless enacted, then the Federal government should be required to bear the costs to state and local governments for the increased costs borne by them for pension and employee benefits. As noted earlier, while the Federal government does not have to live within its budget, nearly all state and local governments must maintain a balanced budget; and, therefore, the local taxpayers will bear the burden of the costs of this proposal. If the Federal government is going to mandate these obligations, then the Federal government should directly pay for the costs the law imposes.

CONCLUSION

The House of Representatives' 1978 Pension Task Force Report revealed that there are over 6,600 public pension plans in the United States. Many of these are quite small; but just 29 of these plans, based on their actuaries' estimates, say that S. 372/H.R. 100 will cost them approximately \$4.9 billion. Several plans that our organization asked to participate in this study, claimed that they did not have the resources to pay for the study.

It is clear that there is a discernable cost in the present bills to just about every public pension plan. The fact that last year's TEFRA legislation imposed considerable additional costs on every public pension plan, exacerbated the fiscal problems facing every state and municipality. And, for Congress to continue to impose requirements on these pension plans when many of them are not able to meet their current administrative and funding obligations, makes absolutely no sense.

On behalf of the Members of the National Council on Teacher retirement, we urge the defeat of S. 372/H.R. 100.

The CHAIRMAN. Thank you.

Representative Arthur, and Representative Seymour, and Senator Halperin.

Mr. ARTHUR. Thank you, Mr. CHAIRMAN. We appreciate very much the opportunity to be here and for you to recognize our organization to be heard.

I am Representative Warren Arthur, and I am president of the National Conference of Insurance Legislators. We are here to express our strong opposition to this legislation. We are very concerned about it. And I have with me Mary Seymour, representative from North Carolina, who is chairman of our State/Federal Relations Committee; and Donald Halperin, who is vice chairman of our State/Federal Relations Committee.

And if you would permit me, I would like for Mary Seymour to make the presentation to the committee.

The CHAIRMAN. Representative Seymour, go right ahead.

Ms. SEYMOUR. Thank you, Mr. Chairman, and Senator Exon.

As Representative Arthur has already stated, the COIL is opposed to S. 372. The membership of COIL is opposed to this legislation in large part because we feel that it is a clear preemption of the rights of States to represent the business of insurance, as established by the McCarren-Ferguson Act.

Although it is popular to cast arguments in terms of civil rights, this bill does not protect the civil rights of the citizens of this Nation. Instead, it is a regulatory action directed toward the business of insurance without regard to the actual actuarial facts upon which the industry operates.

I would like to state that unlike Senator Shehee who spoke from Louisiana, I have no ties to the insurance industry, the business of insurance, but like Senator Shehee, I was a strong supporter of the enactment of the Civil Rights amendment which failed in the State

of North Carolina in three terms, which I labored long and hard for its passage.

In the North Carolina General Assembly I have served for four terms on the House Insurance Committee. I chaired that committee during the 1981-82 session of the General Assembly. I have served as cochairman of a White House Senate Insurance Law Study Committee which had as a part of its task the studying of insurance regulatory laws for North Carolina. This term I chair the House Public Utilities Committee.

The insurance industry probably ranks second only to utilities as the most regulated industry in the United States. Initially, the purpose of this regulation was to guarantee insofar as possible the solvency of the insurance companies which were receiving periodic payments from citizens as insurance against some eventuality, whether it be death in the case of life insurance, sickness as in the case of health insurance, fire in the case of homeowners insurance, et cetera.

The very real financial impact upon insurance companies has been too often discounted by the bill's proponents. The question of insurance company solvencies should be a most important regulatory question before State insurance departments.

This is not to say that COIL advocates giving insurance companies a free hand to create classes based upon race, color, religion, sex, or national origin. As I understand the basic concept of insurance, we are spreading the risk of some possible happening among a group of individuals who have a demonstratable similar risk potential.

Insurance should be available and affordable. The cost of insurance for the group will necessarily be different, whether higher or lower than the cost for a different group having a higher or lower risk potential.

In North Carolina, in automobile insurance, we have a risk classification system, and the insurance industry must demonstrate the similarity of the members of the group. In a major rewrite of our insurance laws in 1977 in the area of automobile liability insurance, a policy decision was made to remove age and sex as a rate criteria. I can assure you that rates went up substantially for young women. They went down dramatically for young men.

In the various States there are statutes which already outlaw most of the discriminations sought to be addressed by S. 372. Most, and perhaps all, States outlaw racial discrimination, which carries over to color and national origin. I know of no demonstrated need for any legislation in the area of discrimination based on religion in the insurance field. This leaves gender as the only real purpose in the legislation.

One category which is omitted from this bill is discrimination based on age. I suppose the reason age was not included was because it was obvious to the drafters that at least in the area of life insurance it was fairly clear that there is a class. Twenty-one-year-olds have a longer life expectancy than 60-year-olds. Statistically this is true at the present time. It may not have been true at other times in history. In any event, it points out that discrimination is not a bad word in and of itself.

I will conclude, Mr. Chairman, just to say that in North Carolina the general statutes for rates in fire and casualty insurance have standards which include the following language: "Rates shall not be excessive, inadequate or unfairly discriminatory." There, discrimination is not only permitted; it is encouraged. And COIL, the State/Federal Relations Committee, which I chair, believe that these matters should really be left to the States and should not be the subject of Federal regulation.

[The statements follow:]

STATEMENTS OF REPRESENTATIVE WARREN D. ARTHUR IV, PRESIDENT OF COIL; REPRESENTATIVE MARY P. SEYMOUR, CHAIRPERSON STATE-FEDERAL RELATIONS COMMITTEE; AND SENATOR DONALD M. HALPERIN, VICE-CHAIRMAN, STATE-FEDERAL RELATIONS COMMITTEE, STATE OF NORTH CAROLINA

We are representing the National Conference of Insurance Legislators (COIL). Our organization is made up of state legislators from over 40 states who are active in the regulation of the business of insurance. We wish to express COIL's opposition to the federal government's preemption of the states' powers to protect the consumers we have all been elected to serve.

Senate 372 has been criticized as a piece of civil rights legislation. In reality it is a regulatory action directed toward the business of insurance without regard to the actuarial facts upon which the insurance industry bases its rates. The very real financial impact upon insurance companies has been too often discounted by the Bill's proponents. The question of insurance companies' solvency is a most important regulatory question before state insurance departments. When an insurance company's surplus is impaired or when a state insurance commissioner is compelled to institute insolvency proceedings for the benefit of policyholders, all parties concerned, particularly consumers, are harmed.

This is not to say that COIL advocates giving insurance companies carte blanche to create classes based upon race, color, religion, sex or national origin. In fact the states have all enacted laws in response to the abuses of insurance companies.

Senate 372, would be imposed upon the states without coordination with our pre-existing insurance regulatory systems. Unlike the Baucus Amendment of 1980 where great care was taken to tie in the federal standards to the actions of our states' insurance commissioners, the Fair Insurance Practices Act would impose mandates without any guidelines. The states would have no flexibility to adapt to varying circumstances.

Senate 372 would impose the civil rights law "effects test" to insurance underwriting decisions. We believe, we all agree that insurance carriers should be using rating criteria based on legitimate experience rating criteria. Some of these are the number of automobile thefts in a community, the number of miles driven, the number of night or weekend miles driven, the type of structure to be covered by the fire insurance to be written, i.e. wood frame as opposed to brick, detached as opposed to attached. These and other legitimate experience rating criteria, that are not based on and not used as an excuse to exercise the discrimination to be outlawed by Senate 372, could be banned by the legislation. As you know, the "effects test" is used in Title VII litigation to hold that a facially neutral practice is suspect, if it has a disparate impact on a protected individual. Upon such a showing, the burden shifts to the defendant. The application of this test is inappropriate in the insurance context.

Insurance is premised on the spreading and sharing of risks and the predictive grouping of individuals. It is one thing to outlaw the grouping by carriers of individuals on the basis of sex, race, color, national origin or religion. It is quite another thing to prohibit the grouping on the basis of facially neutral characteristics such as miles driven, smoking habits, high blood pressure or accidents experienced, if some members of the classes protected by Senate 372 are charged higher rates than others. If the Bill is not clarified to exclude the application of the effects test to suits brought under the legislation, insurance carriers will be subjected to extensive litigation and potential liability on the basis of the use of risk factors we wish them to use.

Another problem relates to the exhaustion of State administrative remedies. The Bill grants the States only sixty days to adjudicate the claim of an aggrieved party. The States with laws prohibiting the discrimination in question should be encouraged to rather than discouraged from actively pursuing the goals of Senate 372.

There are state statutes that already outlaw most of the discrimination addressed in the Bill. Most and perhaps all states outlaw racial discrimination; four have outlawed sex discrimination in all lines of insurance; several others have outlawed sex discrimination in specified lines of insurance. There is no reason to short circuit state procedures that are fair and equitable and afford aggrieved persons due process. Senate 371, though, by arbitrarily removing claims to the already overburdened federal courts does so.

Our next area of concern is with the Bill's provision regarding statistical tables. Section 4(b)(1) of the Bill prohibits the use of any statistical table or any other statistical computation as the basis for "any action which is contrary to the section." This ambiguous wording may have the unfortunate result, again, of calling the "effects test" into play. Statistical tables which are explicitly based on the grouping of insureds by race, color, religion, sex, or national origin are those we believe you wish to outlaw. Statistical tables based on legitimate rating criteria other than race, color, religion, sex or national origin should not be prohibited.

The final concern we wish to discuss today in the lack of study of what we believe will be the very severe financial impact on state and local governments if this bill is passed.

The problems with the bill which we have just discussed are not minor problems. There is a serious question in our minds whether the benefits of the bill are worth the disadvantages which it will cause.

STATEMENT OF MARY P. SEYMOUR, CHAIRMAN, STATE-FEDERAL RELATIONS COMMITTEE,
NATIONAL CONFERENCE OF INSURANCE LEGISLATORS

Mr. Chairman and Members of the Committee: I am representative Mary P. Seymour, a member of the North Carolina General Assembly and chairman of the State-Federal Relations Committee of the National Conference of Insurance Legislators (COIL). I wish to express COIL's opposition to Senate Bill 372 and the the Federal Government's preemption of the State's powers to protect the consumers we have all been elected to serve.

The membership of COIL is opposed to this legislation in large part because we feel it is a clear preemption of the rights of states to regulate the business of insurance as established by the McCarran-Ferguson Act. Although it is popular to cast arguments in terms of civil rights, this bill does not protect the civil rights of the citizens of the nation. Instead, it is a regulatory action directed toward the business of insurance without regard to the actuarial facts upon which the industry operates.

In the North Carolina General Assembly I have served for four terms on the House Insurance Committee and was the Chairman of the Committee during our last Session. I have also served as Co-Chairman of the Insurance Laws Study Committee which had as part of its task the studying of insurance regulatory laws for North Carolina. This term I chair Public Utilities.

The insurance industry probably ranks second only to utilities as the most regulated industry in the United States. Initially, the purpose of this regulation was to guarantee, in so far as possible, the solvency of the insurance companies which were receiving periodic payments from citizens as insurance against some eventuality whether it be death in the case of life insurance, sickness as in the case of health insurance, fires in the case of homeowner's insurance and so forth. The very real financial impact upon insurance companies has been too often discounted by the bills' proponents. The question of insurance companies' solvency should be a most important regulatory question before state insurance departments.

This is not to say that COIL advocates giving insurance companies a free hand to create classes based upon race, color, religion, sex or national origin. As I have always understood the concept of insurance, we are spreading the risk of the happening of some untoward event among a group of individuals who have a demonstrable similar risk potential. The cost of insurance for the group will necessarily be different, whether higher or lower, than the cost for a different group having a higher or lower risk potential. In automobile insurance we in North Carolina call this a "classification system" and the insurance industry must demonstrate the similarity of the members of the group. Again, using automobile insurance as an example every study that I have ever seen or heard about affirms the fact that men have a higher risk of having automobile crashes than women. It is my understanding that there has been testimony before this Committee from the American Academy of Actuaries that women would pay an additional seven hundred million dollars for automobile insurance if this bill were to pass. Please understand that I am not seeking to protect women in opposing this legislation because for other lines of in-

surance, there would be savings to women if this bill were to pass. What I am saying is that this is a matter for the states—their legislators and regulators—and not a matter for Congress.

Relating criteria differ from state to state. It may be that in New Hampshire women have more automobile crashes than men. If so, they should pay higher premiums than men. It may be that in Montana, men live longer than women. If so, life insurance rates should reflect that statistical fact.

There are state statutes which already outlaw most of the discrimination sought to be addressed in this bill. Most and perhaps all states outlaw racial discrimination which carries over to color and national origin. I know of no demonstrated need for any legislation in the area of discrimination based on religion in the insurance field. This leaves gender as the only real purpose in the legislation. One category which is omitted from this bill is discrimination based on age. I suppose the reason age was not included was because it was obvious to the drafters that in at least the area of life insurance it was fairly clear that as a class, twenty-one year olds have a longer life expectancy than sixty year olds. Statistically this is true at the present time. It may not have been true at other times in history. In any event, it points out that "discrimination" is not a bad word in and of itself. We discriminate every day. What is bad is "unfair discrimination". The North Carolina General Statutes for rates in fire and casualty insurance have standards which include the following language: "rates shall not be excessive, inadequate or unfairly discriminatory." Fair discrimination is not only permitted, it is encouraged. Insureds who drive one hundred thousand miles a year should pay a different rate than drivers who only drive to the grocery store and to church. Statistics demonstrate that the former group is more likely to cause losses.

Other speakers have addressed the impact that passage of this bill would have on groups of consumers. Others have addressed administrative costs and changes in benefits. Repetition of those statistics would only clutter the record and I have no desire to do that. From having read those statistics, it is obvious that passage of this bill would have extremely significant impacts on most lines of insurance. COIL's State-Federal Relations Committee believes that these matters should be left to the states and should not be the subject of Federal legislation.

Mr. CHAIRMAN. Thank you very much.

Ms. Gibbons.

Ms. GIBBONS. Mr. Packwood and Mr. Exon, my name is Barbara Gibbons, and I am a member of Concerned Women for America, speaking on behalf of our national director, Beverly LaHaye.

Concerned Women for America is an organization representing over 150,000 women joined together in prayer and action to protect traditional family values in America. I appreciate the opportunity to express our strong opposition to S. 372, the Fair Insurance Practices Act.

At an earlier hearing, Senator Packwood, you expressed confusion over the fact that the same people who oppose the Equal Rights Amendment are now opposing this unisex insurance legislation. You stated that the opponents of the ERA were in favor of having legitimate sex-discrimination solved by specific legislation. This is true. And now that you are addressing the sex-discrimination problem in insurance with specific legislation, you cannot understand why we are not supporting it. We feel that even this proposed specific legislation is much too simplified to cover the entire insurance industry.

A representative from one of the other women's organizations testified that S. 372 would definitely have detrimental effects on women, but in the interest of fairness it was worth it. I disagree. An oversimplified attempt at solving all of the ills of the insurance industry is ridiculous. Why create more problems in solving a few? I look at S. 372 as the ERA of the insurance industry. Yes, it might have some assets, but overall it is a liability to women. Again, we call for specific legislation for specific problems.

Concerned Women for America supports the administration on their stand concerning unisex insurance. In the state of the Union address, the President promised to "take action to remedy inequities in pensions." In his remarks the President was referring solely to employer pension plans. The administration pinpointed a certain problem area and has not proposed sex-neutralization of insurance laws generally. We applaud the administration for this sensible approach. Equity in insurance is a complicated issue that deserves careful study.

The discussion of equality always generates strong and sometimes heated reactions. Concerned Women for America firmly believes in the equality of sexes. We also believe that God created men and women for distinctively different roles. With this in mind we cannot ignore the following facts: Women live longer than men; young women drivers have significantly fewer accidents than men their age; and women have an appreciably higher rate of hospital use than men at most insuring ages.

Requiring insurance premiums to be the same for men and women will not change the fact that the costs of providing hospital benefits are different.

The economic result of sex-neutralizing insurance is going to be disastrous. Currently, women's safer driving experience gives females collectively some \$700 million worth of savings each year in the cost of auto insurance. Life insurance costs women about \$360 million a year less than it does men. S. 372 will wipe out these advantages. There would also be an increase in health insurance premiums such that the medical expense insurance for women would increase \$1.6 million annually and disability insurance for men would increase \$94 million annually with the enactment of S. 372.

Look at the situation of a single mother. After divorce, typically a woman's standard of living goes down by 42 percent and a man's goes up. A woman is economically punished by divorce. Now, add the supposed protection of a unisex insurance system. Suddenly, if she is 35 years old and a nonsmoker, this woman will have to pay up to \$350 more than she currently pays for a \$50,000 term policy for 1 year. The most likely end to this story is that the woman will drop her insurance altogether rather than bear that burden. Or the 23-year old single woman in Philadelphia whose auto insurance rates will go up by \$800 a year. Feminists complain she is already earning less than a man. Their idea of helping her seems to be to add this amount to her obligations.

I thank you for listening to my comments and urge you to vote against the enactment of S. 372, the Fair Insurance Practices Act.

The CHAIRMAN. Thank you for being very patient and waiting so long. Let me address a question, if I might, to Representatives Arthur and Seymour and Senator Halperin. Senator, you did not get a chance to say anything, but if you would differ from them, say now. Both of them made reference to the fact that we should be involved in this, the history of the McCarren-Ferguson Act, and basically insurance has been left to the States to regulate. Do you share that statement?

Mr. HALPERIN. Yes. As a matter of fact, when I testified in front of the House Committee on Commerce, I brought that out, and I received an explanation from Representative Mikulski that in fact

because I had said that I had been a State senator for 13 years, and that during no time did any of the organizations who were lobbying at the Federal level, almost all of whom have chapters for New York State, come to see me and lobby at the State level, and I was told that, well, because of the defeat of ERA, which by the way I voted for the ratification of, and also I voted for State ERA, and also voted to add pregnancy coverage in the law that Mr. Futia mentioned, as well as other similar laws, but I said I had not been lobbied, and that we should be given an opportunity at the State level to do it.

I do not think that that is being done, and I think that there can be some ramifications which are very serious. I know that the mayor of my city, Mr. Koch, was here and explained the impact on the pension plans for the city. The comptroller of New York is now working on preparing unisex tables for pensions, and it is estimated that between the State, the city, and the teachers' retirement systems, we would have to pay about between \$1.1 billion and \$2.1 billion to top up.

Now, that is a very serious issue with us. Mr. Glasser said that, well, under article VII, as employers, we already do not have to go retroactive, but as a matter of fact in 1978, the *Manhart* case, the Supreme Court said that it would not mandate retroactivity, and there are now two cases, one from the ninth circuit and one from the second circuit, which is actually looking at that question.

So that up until now we have not been forced to go retroactive. That could cost us that amount of money.

Now, I think that there are many implications here that may not be foreseen that the States can better deal with by picking and choosing as to where to eliminate discrimination. I would also point out that Senator Gorton mentioned that there is a constitutional imposition that race, sex, and so on are suspect classes. That is not a constitutional imposition. In fact, the Supreme Court has said that it is only where a statute creates them as suspect classes will they be suspect classes.

Now, the problem with that—

The CHAIRMAN. Now, wait a minute. All I want to know is if one of your bases of objection also is the McCarren-Ferguson Act.

Mr. HALPERIN. Yes; absolutely, but I was trying—and I will not go ahead, but I was trying to explain why it could have these effects on the States that the Federal Government might not be in a position to see, and we feel that at the State level we can better deal with those problems.

The CHAIRMAN. Let me pose this question to you, Representative Arthur, and the other two can answer. Granted if we pass this bill, although there are five categories, including race and religion, but only the one of sex seems to bother the companies. They say the others they do not discriminate anyway, and there is no need to pass legislation, and I am not going to quarrel with that one way or the other. So indeed this is a slight interference with McCarren-Ferguson if we pass a Federal law that says you cannot discriminate on the basis of sex, and you would oppose it, among other reasons, on the McCarren-Ferguson Act.

Do you have the same position on product liability?

Mr. ARTHUR. On product liability?

The CHAIRMAN. Where if we pass the bill we are considering it as a preemption of State law. Infinitely greater, we are going to preempt your historical tort law and all of your substantive product liability law with the Federal law. Does COIL have a position in opposition to that bill for the reasons of violating McCarren-Ferguson?

Mr. ARTHUR. We have not taken a position on that.

The CHAIRMAN. Could you speak for the organization? Is there any reason why you should not oppose it based upon that philosophy?

Mr. ARTHUR. Could Senator Halperin answer that?

Mr. HALPERIN. I will be short this time.

I know what it is like sitting up there. We discussed the possibility, a Federal-State committee discussed the possibility, and we decided that while it definitely has an effect upon insurance, it is not solely an insurance issue, and there is so much disagreement that we at least initially did not take a position. In rereading the actual legislation, I think that there may be some issues we would want to consider in the area of the effect upon workers compensation, where there is first an offset and that can affect workers comp rates, and so on, but we have not, we have decided not to take a position for or against the bill in toto.

The CHAIRMAN. Senator Exon?

Senator EXON. Thank you, Mr. Chairman.

May I ask whose chart this is posted on the stand?

Mr. BERNSTEIN. It is mine, Senator.

Senator EXON. I notice on the chart that it says increase in women's auto insurance rates in States represented by members of the U.S. Senate Committee on Commerce, Science, and Transportation, and I was curious as to Omaha, as I had expected, although it is a tremendous increase of \$232. I assume these are annual increases.

Mr. BERNSTEIN. That is correct.

Senator EXON. Omaha, Neb., a woman would have her premium increased \$232, and Newark, N.J., \$674, quite a difference. Now, I guess that I do not quite understand, because I had been led to believe that if we would just go to a common denominator and not view risks or not have any indication at all as to basing a premium on the likely payout rate, that all of these rates should equalize. If we follow that theory, why would not, if we passed the law, why would not the rate in Omaha, Neb., for a woman be the same as a woman in Newark, N.J.?

Mr. BERNSTEIN. Well, because while the principle of the statute might be that groupings are illegal, and we may ultimately get to an extension that eliminates territories nationwide as well as within States, today rates are made on a State by State basis with individual territory.

Senator EXON. It is dependent upon loss ratios, I presume.

Mr. BERNSTEIN. Exactly, so in a State like New York, we have about 65 rating territories. You will have a different rate for the same similarly situated person in each one of those territories because the experience, the losses are different in those jurisdictions.

Senator EXON. Well, I think it is important. It seems to me, though, that we still should base insurance premiums on loss

ratios. I mean how much the insurance company has to pay out. It should not be based on sex, and I hope it is not.

I want to continue to listen to the rest of the testimony and review that that we have had before, and that is likely to follow, but I think the point I am trying to make here is that there are different factors, many different and varying factors that go into deciding what the equitable premium should be for any kind of insurance, and I think that obviously there must be an awful lot more accidents in Newark, N.J., than there are in Omaha, Neb., or the cost of repairing automobiles, it must be an awful lot higher in Newark than it is in Omaha, or maybe a combination of the two.

The point I am trying to make is if we are going to look at fairness, and I think that is the bottom line, fairness in insurance rates, it has to be based on loss ratios. Now, let me ask a few questions, if I might, of Ms. Lautzenheiser. I listened with great interest to your testimony, and you are testifying that this legislation would cost women as a whole more money, and if so, can you break it down as to which women would be hurt the most? Or, let me try and ask it in another fashion that might be a little easier for you to respond to. I assume that if this legislation becomes law as S. 372, there are some women that would benefit from it. Do you have any figures on whether 50 percent of the women would benefit and 50 percent of the women would lose, or 80, 90, or what the ratio might be?

Ms. LAUTZENHEISER. Essentially there are 5 to 15 percent of the women who would substantially benefit. Those are the 5 to 15 percent who do not now have equal health benefits for equal contributions nor equal pension benefits for equal contributions. But by and large, 85 to 95 percent of the women do already have equal pension and health benefits for equal contributions. However, the automobile rates that single and young women currently pay are right now significantly less than men's, and the life insurance rates for all women are now less than for men.

So all women would pay more for their life insurance which they buy with their own discretionary dollars. Single and young women, that is, 40 percent of the working women and 58 percent of the working minority women, would pay more for their automobile insurance if this legislation were passed. And 85 to 95 percent of those women already have equal pension and health benefits so there would be no offsetting decrease in these costs for those women.

Senator EXON. So as a rule of thumb, it is your testimony that if S. 372 were to become law as presently written, it would be helpful to 15 percent of the women and harmful to 85 percent?

Ms. LAUTZENHEISER. That is correct.

Senator EXON. You said this bill discriminates against women. Why do you think this is true? And are we now treating women fairly and equitably as far as insurance premiums are concerned?

Ms. LAUTZENHEISER. Senator Exon, I think you keyed in on that when you were talking with Mr. Bernstein, and that is, something is fair when it is actually based on the cost of the product. Something that is discriminatory disadvantages across the board. In current insurance pricing, women are actually advantaged on the auto side and on the life side. Treating the individual as an individual,

identifying his or her own characteristics and identifying those cost factors in our actuarial statistics, and in our prices, produced the cheaper prices for women on auto and life insurance and the more expensive price on the pension and the health. In all cases they are based on the cost. That is a fair concept of pricing.

Senator EXON. You have indicated if this legislation as currently drafted were signed into law, it would cause actual insolvency of some insurance companies. As an actuary, could you maybe state how that would be, and in your opinion, if you have done a study on it, how many insurance companies would be so affected, and why?

Ms. LAUTZENHEISER. Essentially because the legislation applies to current contracts, it would mean that every contract that is now in force would have to, according to an interpretation at markup last fall on S. 2204, exactly the same bill, would have to make all benefits the higher benefit and all premiums the lower premium. Those contracts were not priced with that kind of an assumption. And in order to set up the reserves based upon those new benefit assumptions and premium assumptions, it would cost anywhere from 30 percent to two times companies' net worths. I believe the ACLI study indicates that 24 companies have reported that they would be technically insolvent.

Senator EXON. How would you recommend that this committee amend the legislation to make it equitable to all parties concerned? In your opinion, is it amendable to where it would be a worthwhile piece of legislation? And I specifically refer to what the chairman said earlier this morning, some time around 9:30, when he indicated that he thought there had been some agreement or arrangement or preliminary discussions or agreements with regard to an amendment that would eliminate, as I understand it, the retroactive features. In your opinion, can this bill be amended, and if so, how, to make it fair and equitable?

Ms. LAUTZENHEISER. This bill can be amended, Senator Exon, by framing an amendment that would not make it retroactive, that is, that would make it not apply to current existing contracts, on amendments that would pay to women, to those 5 to 15 percent of the women who do not now have them, equal benefits for equal contributions in health and pension benefits, through their employer, and would leave the pieces of the legislation that apply to non-employer issues out of the legislation. In other words, restrict it to employer-sponsored plans, so that the 5 to 15 percent that we talked about earlier would benefit from passage of this legislation would in fact have those benefits, but so the legislation would not harm the benefits that are already present in lower price for women in auto and life.

Senator EXON. One more question, if I might, Mr. Chairman, for the representatives of the State legislatures that are here. Can you shed any light—were you here earlier this morning when I questioned the gentleman representing the National Governors Association?

Mr. ARTHUR. Yes, sir.

Senator EXON. Do you remember, I asked him about whether or not the recommendations of the National Governors Conference and the decision of their committee had full input to the Governors

by their insurance commissioners? Certainly as members of State legislatures you work closely with insurance commissioners. Can you tell me how much input and what advice you received, at least, from the insurance commissioners in your States with regard to this bill? And how much input went into the decision and the recommendation that you have made here against S. 372 from the insurance commissioners as a group or from the States that you represent?

Mr. ARTHUR. Well, COIL has a formal working relationship with the National Conference of Insurance Commissioners, and we work with them very closely. We meet with them on a semiannual basis with formal committee meetings, and lately we have been meeting more frequently. By and large they are very much opposed to this legislation, because they realize that it is technically incorrect. They realize that it is going to have an adverse effect on the women in this country, and it is actuarially unsound, and they have communicated that to us, yes, in a very strong, meaningful way, and we recognize that. I recognize that it is technically unsound. And I just hope that you will not do it, because I think there is going to be a tremendous—there was a question asked this morning whether the women's groups—the chairman asked the question about women's groups that came here, whether or not they represented or were in touch with the women in the United States, and frankly, I do not think they are.

Senator EXON. I would say I am very sorry, Representative Arthur, that Senator Hollings is not here this morning.

Mr. ARTHUR. I am sorry he is not, too.

Senator EXON. You and he would be able to understand each other very, very well.

Representative Seymour and Senator Halperin, do you have anything to add?

Ms. SEYMOUR. I have just one thing to add, and that is, one of the concerns of COIL is that as S. 372 is written, it would impose upon the States without coordination with our pre-existing insurance regulatory systems. Some years ago, back in 1980, I believe, the Baucus amendment was passed, or was being debated, and great care was taken to tie that in, to tie in Federal standards with the actions of State insurance commissioners.

Now, I would like to state that the Commissioner of Insurance for the State of North Carolina is an elected commissioner. I think he is one of probably three in the United States that is elected rather than being an appointed commissioner, and in North Carolina he has taken a position as it affects automobile liability insurance, in sort of making it a political issue, and that was substantially why we had a major rewrite of our insurance laws in 1977, when we went from a system of prior approval for essential lines of insurance to a file and use system.

Commissioner Ingram has probably the unique distinction of having lost more cases in court. Most of the companies appeal to the court in North Carolina. The courts have become the regulator. And he spoke before this committee, I think, about 2 weeks ago—maybe it was longer than that, but recently—in support of repeal of the McCarren-Ferguson Act, but I am speaking as a representative of COIL and personally as a legislator who chaired the Insur-

ance Committee, and I can assure you I do not share Commissioner Ingram's position on the repeal of the McCarren-Ferguson Act, and neither does the Conference of Insurance Legislators.

Senator EXON. Are you telling me that the elected insurance commissioner of North Carolina is for outright repeal of McCarren-Ferguson?

Ms. SEYMOUR. That is what he said in testimony before this committee.

Senator EXON. I was not here.

Ms. SEYMOUR. I have a copy of his statement, sir.

Senator EXON. That is a little unusual.

Ms. SEYMOUR. It is very unusual.

Senator EXON. Senator, do you have anything to add?

Mr. HALPERIN. Yes, we have been trying to get our Governor to come out with a formal position.

Senator EXON. Who is your Governor?

Mr. HALPERIN. Mario Cuomo. He is a new Governor. He has had a number of problems since he has gotten into office that have taken precedence over this issue. I do know that some of his staff people have concerns about this on the basis of the preemption issue, but he has not taken a formal position. I think it would be unfair to say what it is.

I would just refer you to one other thing. You mentioned your concern for experienced rating, and I have a memorandum of law that backs this up, so I will not get into it deeply, but under the effects test, if these classes become suspect classes, under the effects test, what you might find is that for instance in the geographic area inhabited largely by one racial, religious group, or group of particular national origin, that a court might determine that by discriminating on a basis other than those, the existence of a race, but let us say in fact that there were wood framehouses connected in a certain community, that if that community was also substantially of one particular group, that they may find that that resulted in discrimination, and under the effects test you do not have to show an intent, and that this legislation could affect in many ways that we do not really see directly experience rating, and I just would urge you to look into that.

Senator EXON. Thank you. I thank the panel, and I thank you, Mr. Chairman.

The CHAIRMAN. I might pass along to you one last comment. You were referring to Representative Arthur's accent. I was at a party with Senator Hollings the other night, and his television consultant, and somebody said to the television consultant, what would be the most expensive part of Senator Hollings' television advertisements, and he said subtitles.

The hearing is adjourned.

[Whereupon, at 12:55 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

[The following material was referred to on p. 148.]

COMMENTS ON THE SENATE COMMERCE COMMITTEE REPORT* ON S. 2204 (THE "FAIR INSURANCE PRACTICES ACT") ON BEHALF OF THE INSURANCE INDUSTRY; COMPILED BY ALLIANCE OF AMERICAN INSURERS, AMERICAN COUNCIL OF LIFE INSURANCE, AMERICAN INSURANCE ASSOCIATION, HEALTH INSURANCE ASSOCIATION OF AMERICA, INSURANCE SERVICES OFFICE, AND NATIONAL ASSOCIATION OF INDEPENDENT INSURERS

These comments relate to the report made on S. 2204 last year, but they are pertinent to any consideration of the two bills introduced in this session of Congress, S. 372 and H.R. 100.

The Senate Commerce Committee Report urges that current ratemaking practices of insurance companies be prohibited because companies put together groups of people representing similar risks for pricing purposes. Treating men as one group and women as another is held to be discriminatory, even though the approach results in each policyholder being charged a premium that reflects all available data that bear on the expected costs of insuring that policyholder. By reflecting the higher mortality rates experienced by men in pricing their products insurance companies are held to be engaging in discriminatory practices. The report argues on the one hand that people must be treated as individuals in the underwriting process and on the other hand that companies must ignore one of the most valid predictors of claim costs—the sex of the applicant for insurance. Ignoring pertinent information, of course, makes it much harder to match the premium being charged to the risk represented by the individual.

The report contains a number of misstatements and some irrelevant arguments and advocates an inappropriate extension of civil rights policy to prohibit cost-based pricing in insurance. We believe the record should be corrected as part of the hearing process in the current Congress. Otherwise, members of Congress could be handicapped in their considerations of current bills.

I. MISSTATEMENTS AND IRRELEVANT ARGUMENTS

We shall list some of the assertions that are either out of date or simply wrong and some of the irrelevant arguments contained in the report. These items contribute to an inaccurate impression that current insurance company practices work to the disadvantage of women.

1. Assertion (pp. 2-3): "Premium rates for women in life insurance are calculated on male-based mortality tables and then 'setback' 3 years as a substitute at every age to construct a female table."

Fact: This assertion is out of date. It relates to a time when life insurers were constrained to follow such a practice by state laws (called the "Standard Valuation Law" and the "Standard Nonforfeiture Law") which permitted them to use no more than a three-year age setback in calculating minimum reserves and cash values on policies issued to women. A three-year setback was a reasonable approximation to the results that would have been obtained by the use of separate tables in earlier decades, but as the difference between male and female mortality widened, a three-year maximum setback became too small. The laws were modernized in the 1970's, and there has been a trend toward basing premium rates on sex differentials wider than a three-year age setback. The most recent revisions of state laws use separate mortality tables for men and women.

2. Assertion (p. 3): "Under some life insurance policies, a married woman can purchase coverage only up to the amount of coverage held by her husband."

Fact: There are some policies (called family policies) under which one spouse (husband or wife, as the case may be) is the principal insured, and the amount of coverage on the other spouse (wife or husband) is less, according to a set formula, as is

*97th Congress, 2nd Session, Senate Report No. 97-671; Calendar No. 964.

the insurance on covered children. These policies are underwritten and sold on a sex-neutral basis: either spouse can be the principal insured. The choice depends on the couple's insurance needs.

3. Assertion (p. 3): "Disability income insurance is often not available to women whose jobs are performed at home, while this insurance is available to men with identical job and risk factors."

Fact: This and the following assertions are, likewise, out of date. A few companies do currently write homemaker disability insurance, but few persons have chosen to purchase such policies. With regard to home-based professional or self-employed women, etc., disability coverage is available to them on the same basis as to men in all states. This equal availability is required by regulations in effect in nineteen states. The regulations are based on a model regulation adopted in 1975 by the National Association of Insurance Commissioners, with the support of the life and health insurance business. A survey made in 1978 found that the 31 large companies surveyed were at that time already complying in all the states in which they did business with virtually all the requirements contained in the model regulation.¹

4. Assertion (p. 3): "Disability income insurance for women may be excluded for periods of disability resulting from medical or surgical treatment of sex-linked disorders."

Fact: This assertion is, likewise, out of date. As mentioned above, nineteen states have adopted regulations prohibiting disparate treatment of male and female sex-linked disorders. Insurers now provide equal treatment of males and females with respect to these benefits in all states.

5. Assertion (p. 3): "Generally, disability insurance policies provide:

Longer waiting periods for women in number of days an insured must be disabled before benefits are payable;

Shorter basic periods—maximum time for which an insured is deemed completely unable to work—usually 5 years for men, 2 years for women; and

Shorter benefit periods—maximum time for which the insured is paid benefits—for women."

Fact: Such practices are prohibited by state regulations. Insurers provide equal treatment of males and females with respect to waiting periods, benefit periods, and all other policy provisions.

6. Assertion (p. 3): "Health insurance of private insurance companies often excludes pregnancy and its related complications from coverage."

Fact: As required by regulation in nineteen states, insurers generally provide coverage for complications of pregnancy on the same basis as other illness. As required by the Pregnancy Discrimination Act of 1978, policies covering employee groups of fifteen or more cover normal pregnancy on the same basis as illness. In other policies, benefits for normal pregnancies may be limited in order to keep premiums at a reasonable level; this would be the practice whether the principal insured were a woman or a man whose wife was also insured under the policy.

7. Assertion (pp. 3-4): "Under the guise of coordination of benefits provisions in many State insurance regulations, women are systematically denied benefits for their dependents even though they have paid for this coverage. Typical provisions call for benefits to be paid on a mother's policy only if the father will attest to the fact that he assumes no responsibility for the children; some companies require that verification for each claim, even when the parents are divorced and the mother has full financial responsibility as well as custody of the children—and in fact even when it is impossible to find the father."

Fact: Coordination of benefits provisions do not deny benefits to anyone until they would exceed the limit of the more generous of the plans under which the two parents are insured. The only purpose of the provisions is to determine the relative responsibilities of the two insurance carriers or policies. Since, however, there can be procedural problems and attendant delay, considerable attention has been given to the matter of how these provisions can best be written to make them both fair and expeditious. Every possible effort has been made to make these provisions both equitable and workable.

The model coordination of benefits provision which has been adopted by the National Association of Insurance Commissioners stipulates that whenever a child is in the custody of one particular parent, that parent's insurance policy has the primary responsibility for benefits for that child's expenses. When a child is in the custody of both parents, the father's insurance is primary. That approach is admittedly arbi-

¹ Letter of May 22, 1978 by E. Paul Barnhart, F.S.A., to the members of the United States Commission on Civil Rights. The one significant exception was that not all companies were treating complications of pregnancy the same in all states, although most of them were.

trary, but has been found to be the best way to get the claims processed promptly. Again, there is no discrimination involved.

8. Assertion (p. 4): "The insurance industry opposes any restrictions on the use of sex to determine insurance rates."

Fact: The insurance industry does not and has not opposed requirements that premium-rate differentials by sex be based fairly on differences in loss experience by sex.

9. Assertion (p. 4): " * * * These rates are based on group averages that do not describe individual cases. * * * TIAACREF's figures showed that 86 percent of the women had the same death age as 86 percent of the men. Thus, because 14 percent of the women did not match the death ages of the men, all women receive lesser monthly retirement benefits than all the men."

Fact: The argument made here, which is sometimes called the "overlap theory", has a certain surface appeal, but is diversionary and irrelevant to the questions of how to provide for the costs of benefits and the impact of mortality differences on these costs.

The overlap theory is based on the observation that, out of a typical large group of men and an equally large group of women, all starting out at age 65, the ages at death of individual men and women can be matched in such a way that only about 14 percent of the women die later than their male counterparts. The first thing to note about the theory is that it is also possible to match the ages at death in such a way that virtually every woman dies later than her male counterpart. This can be done by matching the first woman to die with the first man, the second woman to die with the second man, etc. Or, looking at things another way, if the matching is done in the way called for by the overlap theory, the 14 percent of the women who remain unmatched will die an average of twenty years later than the average unmatched male.

The next thing to note is that if, instead of looking at a group of men age 65 and a group of women age 65, we were to look at a group of women age 65 and a group of women age 70, we would find the same overlap of the durations until death between the age-65 group of women and the age-70 group of women. Much the same overlap would exist at five-year intervals throughout the entire span of life.

Therefore, if the overlap theory's proponents are saying that it would be improper to reflect differences in mortality rates for any groups for whom a substantial overlap in durations until death can be produced, the same argument would preclude charging different rates for people of different ages. Such a prohibition would keep companies from being able to sell life insurance on a sound financial basis.

In any event, the overlap argument misses the reason for which mortality tables are used in pricing life insurance and annuity products. It is not possible to base life insurance and annuity premiums on when an individual will actually die. That time cannot be known when a contract is issued. What can be predicted by the use of mortality tables is how many claims will arise from a large group in any given year. Mortality tables make it possible to charge premiums that will cover these claims fairly accurately. Those mortality tables that have been used to demonstrate the overlap show, in fact, that substantially higher premiums would be needed to pay life insurance claims generated by insuring a group of men aged 65 than would be needed for a corresponding group of women. The opposite relationship is shown for annuities.

The fallacies in the overlap theory have been effectively explained by many experts, including Professor Spencer L. Kimball (American Bar Foundation Research Journal, Volume 1979 Winter, 120-123), Professor Robert J. Myers, former Chief Actuary of the Social Security Administration (9 Civil Rights Digest, 1977, 45-46), and four members of the faculty of Wharton School, University of Pennsylvania, in the book, *Risk Classification in Life Insurance* (Kluwer-Nijhoff, Boston, 1982).

The figures filed by TIAA-CREF in the *Manhart* case were not filed in support of the "overlap theory." They were filed to demonstrate that it costs much more to provide annuities to women than to men.

The overlap theory can lead to bizarre conclusions. For example, the report remarks on page 8 that because "more than 90 percent of either males or females will not be involved in any accident during a given year, the usual length of a contract for insurance, gender is an inaccurate proxy for other, more germane bases of classification." That assertion ignores the fact that males have a significantly higher accident rate than do females. One might as well conclude that a one-year term life insurance policy should cost the same for a seventy-year-old person as for a thirty-year-old person, simply because over ninety-five percent of either thirty-year-olds or seventy-year-olds will not die during a given year.

10. Assertion (p. 4): " * * * careful male drivers pay higher auto insurance rates based on the male average, while careless female drivers benefit from insurers' experience with other women."

Fact: Almost all auto insurers have in effect a merit rating program which recognizes individual driver experience. This means that within the same class careful (i.e., accident-free) drivers pay less than careless drivers (i.e., those who do have accidents on their record).

A more accurate statement, therefore, would be that accident-free male drivers pay lower auto insurance rates than the average male driver, and female drivers with accidents pay higher rates than the average female driver.

11. Assertion (p. 8): "Less than 6 percent of all males and 4 percent of all female drivers will have an accident in a given year. . . . Gender is an inaccurate proxy for other, more germane bases of classification."

Fact: Even the figures cited in the Committee report make it clear that the male accident rate is approximately 50 percent higher than the female accident rate. These figures, however, are for males and females at all ages. For the under-25 age groups, where male and female auto rates differ, the accident rates are substantially higher. Using the same source data as quoted in the Committee report, males under age 20 have a 13.2 accident rate, while females have a 7.2 accident rate. At ages 20-24 the male rate is 9.5 and the female rate is 5.0. Therefore, at the younger ages, where men and women pay different auto insurance rates, males have accident rates more than 80 percent higher than females.

In a study on the role of risk classification conducted by SRI International (formerly Stanford Research Institute) the authors, while recognizing that auto accidents were relatively infrequent occurrences, found that separating drivers on the basis of sex was a strong indicator of future accident involvement. Commenting on some misinterpretations of its conclusions, Dr. Harry J. Solberg of SRI stated:

Our discussion and statistical estimates of the separation achieved by a two-way classification system, ironically, has been misinterpreted. Our example partitioning drivers into two classes, male and female, demonstrated the usefulness rather than the weakness of such a simple division; we described this as "one of the simplest dichotomies" that ". . . is nonetheless very powerful compared to much more refined classification systems."²

Furthermore, a May 1979 Report of the Advisory Committee to the NAIC Task Force analyzed commonly suggested alternatives to age and sex as rating variables for auto insurance and demonstrated that "although emotionally appealing, as substitutes they clearly will not work." The report concluded that "mileage is not an effective substitute for sex since females have a demonstrably lower accident rate than males within each category of miles driven."³

12. Assertion (p. 10): "Life Expectancy—If sex is a legitimate predictor of losses so is race, religion or ethnic background, none of which are currently used by insurers to predict losses. For example, insurers do not use separate tables for Mormons and Seventh Day Adventists who have a longer life expectancy than white persons generally or for Jews under 65, who have a shorter life expectancy than the average population, or for blacks, who have a substantially shorter life expectancy than the population as a whole."

Fact: None of the factors mentioned is as significant a predictor of losses for life insurance as is sex. With regard to blacks, the male-female mortality differences in the U.S. population are substantially larger than the black-white differences, and the black-white differences reflect differences in economic status. Those blacks with more favorable economic status, who can afford to buy the most life insurance, constitute a class with mortality experience significantly more favorable than that of blacks as a whole. With regard to Mormons and Seventh-day Adventists, their favorable mortality can be ascribed to life-style factors which are reflected in life-insurance premium rates. With regard to Jews, the difference between their mortality rates and those of others has not been shown to be significant. These points are documented in Exhibit 1, attached.

13. Assertion (p. 11): "Even if the black-white differences in life expectancy are due to 'socioeconomic conditions,' those differences exist now, and the 'socio-economic conditions' will probably persist for a long time. Their cost impacts are no different than the cost impacts of any life expectancy differences that now exist or may occur in the future because of any 'biological conditions.'"

² Letter of Harry J. Solberg to Mr. B. I. Farrell, Assistant Commissioner, California Insurance Department, Oct. 4, 1978.

³ Private passenger Automobile Insurance Risk Classification: A Report of the Advisory Committee, May, 1979; p. 67-77.

Fact: As explained above, the impact on life insurers of not making any distinctions by race is much smaller than would be the impact of not making any distinctions by sex. In addition to the reasons cited above there is the fact that life insurers do rate by some of the factors which contribute to the additional mortality experienced today by blacks—for example, occupation.

As the status of blacks continues to improve, their living conditions, health conditions, and occupations should contribute to improved mortality. They will also, no doubt, buy more life insurance. It seems reasonable to assume that the impact of their somewhat higher mortality will become even less significant to life insurers than it is now.

14. Assertion (p. 11): "Indeed, the very premise of the industry's argument—that male-female mortality differences are 'biological'—is highly questionable."

Fact: Our argument is not premised on the existence of a biological cause-and-effect relationship. It is difficult, if not impossible, to prove causality with respect to any particular characteristic or factor. Scientific inquiry relies on findings of a significant statistical correlation in making predictions. Sex correlates more strongly with mortality than do race or religion. The why of this fact is not generally important for insurance purposes.

As it happens, however, there are reasons for suspecting a causal relation between sex and mortality. Among them are: (1) the presence of two X chromosomes in females (as against only one in males), which enables one X chromosome to compensate for any recessive genes in the other;⁴ and (2) the fact that even before birth, significantly more male fetuses than female fetuses fail to survive.

Given the many biological differences between the sexes, such as differences in their hormonal balance and different rates of production of substances such as prostaglandins, it would seem highly coincidental if males and females had the same innate longevity potential.

15. Assertion (p. 11): "There are many countries where females have had, or now have, greater mortality rates . . . than males. In the United States around 1920 female mortality at various ages exceeded male mortality."

Fact: Mortality patterns in many other parts of the world or in earlier times are not relevant to current experience in the United States. Mortality resulting from complications of pregnancy and childbirth is still very high in some countries. Other factors, such as a high incidence of disease, may affect the difference in mortality rates by sex.

It is interesting that the Committee report should focus on the year 1920 for its U.S. observations. In the United States around 1920 the influenza epidemic of 1918 had distorted the mortality picture during the next few years. A large number of people in poor health died of influenza in 1918. The survivors were those in more robust health, and they exhibited unusually low mortality rates in the 1919-1921 study period. The effect was more pronounced on the males than on the females. As a result the excess of female life expectancy at birth over male life expectancy at birth dipped to 1.8 years in 1919-1921, as against 3.4 years in 1909-1911 and 3.3 years in 1929-1931.⁵

16. Assertion (p. 11): "Moreover, the various differences between male and female mortality have clearly been influenced and modified by changing behaviors and life styles and the adequacy of medical care, food, epidemics, etc."

Fact: One might reasonably ask whether the entire observed sex differential at a given time could be traced to differences in other factors, such as life style. This question was addressed by a doctoral candidate at the University of California, Deborah Wingard.⁶

Ms. Wingard was studying problems of public health, and her work had no connection with insurance or the insurance business. She studied a sample of 4,700 men and women over a nine-year period. She applied multivariate analysis to measure the influence of each of sixteen different factors, including ten behavioral factors, on the observed mortality differential between the sexes. For example, her analysis showed that if men and women did not have different smoking habits, the excess of male mortality over female mortality would be 27 percentage points smaller.

When Ms. Wingard adjusted the observed mortality differential for all 16 factors simultaneously, however, she found that the mortality differential between the

⁴ Scheinfeld, Amram, *Your Heredity and Environment*, Lippincott, 1965, 217-224.

⁵ "Some Trends and Comparisons of United States Life-Table Data: 1900-1971", T.N.E. Greville, *U.S. Decennial Life Tables for 1969-71*, Volume I, Number 4, National Center for Health Statistics, May 1975.

⁶ "The Sex Differential in Mortality Rates: Demographic and Behavioral Factors", Deborah L. Wingard, presented in June 1980 to the Society of Epidemiologic Research.

sexes got wider, not smaller. Contrary to her expectations, these factors had not provided any alternative explanation of the actual mortality differential between men and women.

17. Assertion (p. 11): "The insurance industry largely ignores other more relevant classification criteria affecting the life expectancy of people, such as smoking habits, physical conditions, geographic location, family health history, recreational and occupational activities, etc. Indeed, with respect to annuities, the industry recognizes only sex and age as significant risk classifications."

Fact: All of the listed criteria are used in life-insurance underwriting (geographic location may be irrelevant except for extreme cases). With respect to annuities, where typically only age and sex are used, there have been experiments in the general annuity market with the granting of special, favorable rates to persons who are not in good health. Little demand for such an arrangement has been found. It appears that people who do not feel that they have good prospects for longevity do not buy annuities.

On the other hand, people who do choose to take a life annuity tend to have better prospects for long life than the average person. For example, the 1979 Reports of Mortality and Morbidity Experience, published by the Society of Actuaries, show that under annuities issued as settlements arising from death claims, the mortality observed between 1971 and 1976 anniversaries, as a percentage of that expected, was 104% among females who elected to receive an annuity and 110% among those who received it automatically pursuant to the terms of the life insurance policy under which the death claim was being paid. Those ratios show that the women who chose life annuities experienced more favorable mortality than those who had not made such a choice but who had instead received life annuities automatically.

In view of the fact that people who buy annuities tend to be those with the best prospects for long life, there is no need for an elaborate classification system in the broad annuity market.

18. Assertion (p. 12): "According to State Mutual's president and chief executive officer, only 30 percent of the approximately 1,800 life insurance companies in the United States then offered lower premium rates for nonsmokers."

Fact: Most life insurance policies now being issued carry premium rates which are differentiated on the basis of smoking habits. For over a decade after the first Surgeon General's Report, most companies hesitated to differentiate by smoking habits, for fear of not being able to identify the actual smokers and nonsmokers accurately. When one large, pioneering company published its experience in 1980 and proved that the differential can be administered on a sound basis, other companies, for competitive reasons, quite quickly followed suit. Incidentally, those 500-plus companies that charge nonsmokers lower rates sell the great bulk of the life insurance business sold in the United States.

19. Assertion (p. 12): "The life expectancy of persons living in Hawaii exceeds that of people living in the District of Columbia far more than does the life expectancy of females over males. But, insurance companies do not base their life insurance premiums on that geographical differential."

Fact: The residents of any particular state are not homogeneous as to occupation, life style, and other characteristics which are taken into account in life insurance premium rates. In other words, if the residents of one state who were rated standard-class for individual life insurance were compared with the residents of another state who also were rated standard-class, the difference in their mortality would, most probably, be smaller than the difference based on the state populations as a whole.

In any event, the difference in life expectancy of white males between Hawaii and the District of Columbia, based on deaths in years 1969-1971, was only 4.7 years at age 25 and 4.2 years at age 45, while the difference between white males and white females for the United States as a whole was 6.7 years and 6.0 years, respectively, at those ages.

Even if geography, of itself, were a highly significant mortality factor, it would be relatively ineffective to use as a life insurance classification, because of the mobility of the United States population. Insurance companies utilize personal health habits and other personal criteria to set rates if such criteria are both cost-effective and fair. Everyone would lose if companies were to use criteria for which the administrative cost of classifying would exceed the claim cost differences which can be expected.

20. Assertion (p. 12): "The sex-differentiated actuarial tables which the insurance industry uses for life insurance have not been based on female mortality experience. Instead, the industry has simply used male-based mortality tables and applied

an arbitrary setback of 3 years (or 5 or 6 years in some States) as a substitute at every age to construct a female table."

Fact: We discussed the 3-year age setback on page two of these comments. As stated there, companies have followed trends in state laws setting minimum nonforfeiture benefits by basing life insurance premium rates on mortality differentials wider than those provided by a uniform 3-year age setback. As for uniform age setbacks generally, the differences between the resulting rates and those produced by the use of separate mortality tables are small enough at the various ages, with today's mortality patterns, to permit reasonable equity.

21. Assertion (p. 12): "Although separate female-based mortality tables were constructed for annuity purposes, they are not widely used because they are not regarded as actuarially credible."

Fact: This statement is inaccurate as it applies to annuities sold to individuals. A survey of the first thirty life insurance companies listed (alphabetically) in the 1982 Best's Flitcraft Compend shows that twenty-seven of them base their purchase rates for individual immediate annuities on separate male and female tables. The Fellers-Jackson paper referred to in the footnote in the report dealt only with group annuities. It does appear that many, or most, life insurers use age setbacks for their group annuity purchase rates. As we explained above, it is generally possible to use an age setback that will come close to the theoretically accurate sex differentials at the various ages. This is especially true of group annuities, where the purchases are concentrated in a narrow age range at the typical retirement ages.

22. Assertion (p. 12): "Furthermore, different sex-differentiated tables have generally been applied for insurance than for annuity purposes. . . . Thus, one table is used to justify higher than necessary insurance premiums, and the other to justify lower than necessary annuity benefits."

Fact: Different mortality tables are used for annuity and life insurance pricing because people buying annuities have been observed to live longer than those buying life insurance at the same age. The figures cited in the report reflect the additional fact that different tables are used as legislated standards for determining life insurance company solvency. In order to make sure that an insurance company is holding enough money to meet its obligations, state insurance regulators require that its liabilities be calculated on the basis of mortality rates which contain a margin for adverse contingencies. That means that the mortality rates used for life insurance liabilities must be higher than the anticipated rates, and the mortality rates used for annuity liabilities must be lower than the anticipated rates.

23. Assertion (p. 12): "In addition, the data generally used is in dollars of exposure rather than numbers of individual deaths, a method which further distorts sex mortality rates since males carry at least 10 times the amount of insurance than females carry."

Fact: For each sex, both the numerators and the denominators of the mortality rates (or ratios) are in terms of dollar amounts of insurance. It makes no difference in the results, therefore, that average policy sizes are larger for men than for women.

24. Assertion (p. 13): "Two recent studies submitted to Congress by the Alliance of American Insurers showed that male drivers had more accidents and that those accidents were more expensive than those involving females. However, when mileage differences are accounted for females had many more accidents per mile and were 50 percent more expensive to insure on a per mile basis. Another study, conducted by the California Insurance Department, also proved that, on a mileage adjusted basis, in most age groups females had more accidents than males."

"These data were recently carefully examined in many days of hearings by the New Jersey Insurance Department and by the New Jersey State Commission on Sex Discrimination in the Statutes. Their reports demonstrate that when accident statistics are correctly collected, to reflect ratios per numbers of drivers, and adjusted for mileage, those data show that females had more accidents per mile and per person and were more expensive to insure, than males."

Fact: According to Accident Facts 1982, published by the National Safety Council, although males comprised approximately 53 percent of the driving population in 1981 they were involved in 68 percent of the auto accidents in that year.⁷

For youthful drivers the result is even more dramatic. According to a Study of California Driving Performance conducted by the California Department of Insurance the driving experience for females under age 25 was 35-50 percent better than

⁷ Accident Facts 1982, National Safety Council, p. 54.

that for males of comparable age, even when adjusted for average annual miles driven.⁸

These facts come from studies and reports, conducted outside the insurance industry, of non-insurance statistics. On the other hand, the portions of the Commerce Committee Report dealing with auto insurance rely almost entirely on an eight-page preliminary statement (plus charts and footnotes) released in October 1982 by the New Jersey Commission on Sex Discrimination in the Statutes (hereafter the N.J. Commission). Since that report was not available during the one-day hearing on S. 2204, witnesses were unable to comment on its incorrect conclusions and misinterpretations of data. Since its release, however, it has been refuted by all knowledgeable parties who have reviewed it.

Since the Committee report repeats statements from the N.J. Commission, all such statements were examined in detail, with the most glaring errors and inaccuracies described in these comments.

The Commerce Committee report's assertion about per-mile accident rates simply does not hold up under any reasonable analysis of available data. As clearly demonstrated in Exhibits 2, 3, and 4 attached (non-insurance statistics), males have a significantly higher rate of auto accidents than do females. From both the California Driver Fact Book and the U.S. Department of Transportation study it can be seen quite clearly that in every category of miles driven males have higher accident rates than females. No reasonable or valid "adjustments for mileage" can change these figures.

While available evidence does indicate that females on the average do drive fewer miles than males, a valid adjustment for these differing driving habits does not alter the results. Even if the female driving pattern were equivalent to males, the male accident rate would still be 30 percent higher than that of females (using Exhibit 3 with the female accident rates and the male distribution of mileage categories).

The "data" referred to in the Commerce Committee report were not carefully examined by the N.J. Commission (nor, indeed, the Commerce Committee). Had they been, these errors would have been revealed. In fact, the Commission never suggested that they would attempt to undertake a statistical analysis. Because of this serious shortcoming the American Insurance Association protested the findings and submitted a letter to Senator Lipman, who chaired the Commission. The following quotation is from that letter:

" * * * While attending the public hearings earlier this year, we became concerned that the Commission might venture into the quagmire of data on this subject without a thorough analysis. We suggested that the Commission should carefully define its task and either limit its deliberations to public-policy considerations or undertake a full-blown statistical inquiry. In the interest of fairness, we pointed out that the Commission provide public notice of any intention to undertake an actuarial inquiry and to provide an opportunity for appropriate expert testimony.

As you know, the Insurance Department hearing took two years to complete and generated a roomful of documents and transcripts . . . After reading the preliminary analysis of the Commission, it is apparent that the Commission members or its staff did not take the opportunity to analyze the full hearing record. We did advise the Commission of the availability of that data. We also cited a few studies as examples, but no one has ever asked us for copies of those studies or for any other statistical information.

In short, it appears that the N.J. Commission never examined any data.

Finally, we should note that the footnotes in the N.J. statement which purport to "prove" the validity of their conclusions do not in fact produce the results which are cited; in fact, the formulas presented cannot be interpreted in any meaningful way.

25. Assertion (pp. 13-14): "Under that system, any accident involving a car which a young male is authorized under the insurance policy to drive is listed as a 'young male car accident', even though the young male is nowhere near the car and even though the accident was caused by someone else's fault."

Fact: There is no distortion in auto insurance statistics. The basic unit of auto insurance is the car and not the driver. The insurance policy covers the car no matter who is driving. Therefore, the insurance statistics are gathered on that basis.

In order to determine the premium which should be paid for that auto policy, the age and sex of the drivers will be considered. If an occasional operator is a youthful male, for example, the car will be rated on that basis. Experience has shown that cars with a youthful male operator do have higher claim frequencies and costs than

⁸ Study of California Driving Performance (Phase II), A Research Project of the Rate Regulation Division, California Department of Insurance. (Exhibit 4).

cars without a youthful male operator. By analyzing the experiences for the car and all its drivers, the appropriate premium can be determined.

26. Assertion (p. 14): "Sex is utilized as a proxy . . . of other . . . variables such as mileage. . . ."

Fact: The statement is simply false. Numerous studies have been made, all of which demonstrate that sex is not a surrogate variable for mileage (see pp. 10 and 21 above). No support is given for the statement, which is a direct quote from the N.J. Commission statement.

27. Assertion (p. 14): "The Committee also questions whether sex is a legitimate predictor of losses for health and disability insurance purposes."

Fact: The broad range of studies of disability experience comparing men and women by age and income shows higher disability claim costs for women at most ages. The few contrary examples tend not to be adjusted to reflect the occupation and age differences and, therefore, are less reliable. It is always necessary to take account of all known significant variables, as far as they can be discovered.

The California Department of Employment data shown on page 14 of the report are inconclusive, if for no other reason than that they show only the average number of weeks per claim. The cost of claims incurred involves the number of claims as well as the length of the average claim. As a minimum, therefore, claim frequency would also have to be known. Many other factors, such as duties of employment, might also be relevant.

The letter by the President of the New York City Council, excerpted on pages 14-15 of the Senate Committee report, was reviewed by a subcommittee of the National Association of Insurance Commissioners. That subcommittee, in April 1980, requested further information from the President of the New York City Council. With respect to the United Storeworkers Union (the one for which the females were said to show lower average disability costs than the males) the NAIC subcommittee's letter specifically pointed out that the data which had been furnished did not show the age distribution for each sex and did not show the types of duties of the workers. To our knowledge, no reply to this request for further information was ever received.

The New York Insurance Department, in a report issued in 1976, found that "Sex is a major factor affecting the cost of disability income insurance."⁹

28. Assertion (p. 15): "Disability insurance has never been available to women on a cost competitive basis."

Fact: Group disability insurance is always available to women on the same basis as to men in the same group. With respect to individual insurance, the statement is now out of date. The premium-rate differentials in individual disability insurance have been narrowing in recent years, reflecting trends in claim experience, and coverage is now available at "unisex" rates in the occupational classes where most individual disability insurance is purchased.

29. Assertion (p. 15): "Automobile insureds can be grouped by factors such as past traffic offenses, past accidents, past claims, kind of automobile driven, how often the car is used, driving experience, education, and age."

Fact: These other variables are already a part of the auto classification plans of most insurers. Consequently they cannot serve as substitutes. See the Report of the NAIC Advisory Committee on Risk Classification, which reviewed commonly suggested alternatives and found they did not work.

30. Assertion (p. 16): "The difference in life expectancy between highly and poorly educated women is greater than the difference between the sexes, but educated women still buy life insurance. The difference in life expectancy between married and single men is greater than the difference between the sexes, but married men still buy life insurance."

Fact: These statements, to the extent that they may be true, overlook certain important considerations with regard to life insurance. These points are explained in Exhibit 5.

31. Assertion (p. 16): "The McCarran Act is not a limitation on Congress' own authority to regulate the business of insurance; it has exercised its authority in the past; and it is particularly appropriate for Congress to prohibit discrimination in insurance."

Fact: The recommendation to enact the proposed legislation represents a severe departure from the McCarran Act's primary purpose to "assure that the states are free to regulate insurance companies without fear of Commerce Clause attack" and "to give support to the existing and future state systems for regulating and taxing the business of insurance." In enacting the McCarran Act, "Congress was mainly

⁹ Disability Income Insurance Cost Differentials Between Men and Women, State of New York Insurance Department, 1976, 27.

concerned with the relationship between insurance ratemaking and the antitrust laws."

The effect of enacting this bill would be to overrule state laws that permit insurers to base their premiums on actual loss experience and sound actuarial principles. The classifications used by insurers and the differentials reflected in them are subject to constant legislative and regulatory review by the states. California, in fact, currently has a statute requiring the use of separate mortality tables for men and women or age setbacks of separate tables are not available, which are practices that S. 2204 would prohibit.

The bill also addresses race, color, religion and national origin. However, there is no evidence or even allegations that insurers discriminate in these areas, or that state statutes and regulations do not already effectively proscribe such discrimination.

A bill such as S. 2204 would intrude on the state regulation of insurance in all these areas and also in the area of ensuring that company funds are not expended to the undue advantage of one class of policyowners over another.

32. Assertion (p. 17): "Sex-differentials in insurance rates for life insurance, health insurance, disability insurance annuities and pensions are all based on national statistics. If the current practices are in fact unfair, then the most sensible way to address the problem is the enactment of a Federal law. This is so because even insurance industry representatives admit it would be difficult to operate under different rules in different States:

'It is also important to bear in mind that once a few of the bellwether States. . . . [adopt. . . . regulations] they have a pervasive effect upon the industry, because the industry really can't live by doing business on one basis, in a few States, and on another basis in other States.'"

Fact: The statement that insurance differentials are measured on a national basis is misleading and does not support the Committee's assertion that national legislation on this subject is necessary. Each company uses its own loss experience to determine its premium rates—that's why such rates differ from company to company. Also, health care costs differ in varying regions of the country, so national loss statistics are not sufficient in and of themselves to set a rate.

The point of the industry quotation is to inform the Committee that uniform regulation of insurance is *not* necessary for a uniform policy to be adopted. It is a strength of state regulation that a few of the larger states which constitute important markets can influence the business in a positive fashion, without the need for intrusive and duplicative federal regulation. Passage of S. 2204 would be a repudiation of the concept of federalism.

33. Assertion (p. 17): "A task force of the National Association of Insurance Commissioners concluded that 'as rating characteristics, sex and marital status are seriously lacking in justification and should therefore be prohibited as classification factors' in automobile insurance. The NAIC, however, has not followed through on this recommendation of its own task force."

Fact: The NAIC did not follow through with the task force recommendation because it did not agree with those recommendations. In order to assist the NAIC in its deliberations an Advisory Committee of insurance industry experts was appointed to study the issues and report back. In May 1979 a 432-page report, "Private Passenger Automobile Insurance Risk Classification", was presented by the Advisory Committee. After reviewing that study, the NAIC decided not to accept the task force recommendation.

It may be noted that the National Association of Insurance Commissioners has addressed the question of sex-distinct premium rates in life and health insurance as well as in automobile insurance. In 1980 the NAIC adopted a resolution endorsing the use, in life and health insurance, of "a risk classification system which appropriately reflects cost differences by sex or both cost differences by sex and distribution by sex as being in the best interests of buyers of insurance."

34. Assertion (p. 17): "CBO noted that the Justice Department estimated that the enforcement provisions of the bill may cost up to \$200,000. The Committee disagrees with the Justice Department estimate. Once the bill becomes law it is expected that the insurance industry will comply with the law and prosecution by the U.S. Attorney General will not be necessary."

Fact: The bill would require companies to change existing contracts. It is drafted in such general terms that it is not clear which if any of several alternative methods of changing benefits or premiums would be in compliance with both the bill and other existing statutes. Thus, companies might not be able to know whether they were in compliance until after courts had examined the bill and its application.

To the extent that the bill would require additional benefits to be provided by employers or insurers without corresponding sources of income, employers or insurers would suffer additional losses. This would result in lower income tax revenue for the United States. The potential loss of tax revenue is not even mentioned in the report.

35. Assertion (pp. 17-18): "There has been so much discussion and review of the effect of the bill on consumer insurance rates. Certainly, there will be some shifting of costs. However, the Committee notes that the amount of increased or decreased costs to consumers will be determined by the insurance industry, competition, and the State Insurance Departments. The Committee believes that a shift in costs associated with health, life, disability and auto insurance will be tempered by use of factors other than sex; such as medical history, age, and occupation for disability, health and life insurance; and age, accident record, driving record, and mileage driven for automobile insurance. Further, the Committee believes that any shift in costs from one individual to another will result in a more fair rating system for all.

Fact: As we have explained, each of the other factors mentioned is already used to the extent of its effectiveness in setting insurance premiums. What is not known is the extent to which persons who would be called upon to subsidize others would choose to buy less insurance. Those who chose to buy less insurance might later suffer a personal cost as a result of not being adequately covered by insurance. The societal costs resulting from potential underinsurance are difficult to estimate.

As to whether the costs would be "fairer" after the shifts, we reiterate that there is nothing "unfair" about a classification that accurately reflects the expected costs of insuring the members of the class.

36. Assertion (p. 18): "The Labor Department estimates of the unfunded liability for private pension plans are expected to be under \$500 million."

Fact: We do not understand the reference to a \$500 million figure which is attributed to the Labor Department. The figure is, presumably, an annual additional cost figure. It may be based on the assumption that future pension benefits would not have to be "topped up"—i.e., not have to be equalized at levels which would not cause any participants to receive smaller benefits than they otherwise would have. We believe that the bill would require topping up. The Labor Department's latest estimate of the near-term additional cost on the basis of topping up future benefits under private, state and local plans is approximately \$1 billion per year. That estimate is considerably lower than the Department's earlier estimates.

37. (Assertion p. 18): "With regard to employer plans: if enough employees have voluntarily terminated before the employer contributions on their behalf have vested, if investments brought a higher return than anticipated, or many other favorable contingencies affecting the funding have occurred, then there may not need to be additional funding to establish equal benefits at the preferred sex rate."

Fact: Vesting, investment returns, and other contingencies have been reflected in the estimates of the cost of this bill. When it is recognized that some pension plans, with predominantly female participation, could incur annual cost increases of close to ten percent of the present annual cost of the plan, the significance of the bill can be more easily grasped. Such plans might be cut back or terminated by their sponsors.

38. Assertion (p. 19): "Insurers will make up this difference in future premiums and contributions."

Fact: Most of the increased cost would be borne by the plan sponsors (and/or participants).

39. Assertion (p. 19): "Insurance companies' rate structures have enormous built-in margins to protect them."

Fact: This assertion, which is aimed at life insurance and annuities, is an exaggeration. Cash values and reserves are calculated on mortality tables that were specified in state laws at the time of issue. Low-yielding assets purchased many years ago are carried at values in excess of their worth in today's high interest rate environment. Premiums for both participating and nonparticipating policies reflect currently anticipated mortality and interest at time of issue. Participating policies have slightly larger margins than nonparticipating, because there are no stockholders to cushion the effect of adverse experience. These margins in participating policies have provided funds from which dividends have been paid as experience warranted.

The danger to life insurance companies' financial strength lies in the impact of the bill on existing policies. The companies would have to increase payments under existing annuities without being able to obtain additional purchase money. As for existing life insurance policies, the companies would have either to increase future benefits for men and women (including death benefits and cash surrender values) or to reduce future premiums for men or to do all of these. The alternative of trying to

increase premiums on existing policies when such policies have guaranteed rates, even if made lawful by the Congress, would not be readily accepted by the policyholders. Most of these rate increases would be on life insurance policies issued to women. The explanation that the additional premium was necessary since companies could not otherwise afford increased benefits for men as required by Congress, would not be accepted by many women.

The Committee report does not reflect the seriousness of these problems.

40. Assertion (p. 23): "It should be noted, however, that at least since 1972, employers and insurers have been on notice that title VII of the 1964 Civil Rights Act prohibited discrimination in insurance and annuities connected with employment."

Fact: Title VII does not address the pricing of insurance or annuities that are sold by insurance companies in a free market to employers in order to insure employee benefit plans. Whether and to what extent it applies to the benefits payable under the terms of the plans themselves is currently being tested in the courts.

II. INAPPROPRIATE EXTENSION OF CIVIL RIGHTS POLICY TO INSURANCE PRICING

The report begins by stating that the intent of S. 2204 is to extend the established civil rights policy of the United States to the business of insurance. It refers to federal policy which has been established in the areas of employment, credit, housing, public accommodations, transportation, recreation, voting, and athletics. It states that the fundamental civil rights policy in the United States is that no individual shall be treated differently because of his or her membership in a racial, sexual, religious, or ethnic group.

In the second full paragraph on page 4, it is asserted: "From the civil rights perspective, charging all men more for auto insurance because of average male loss experience is like paying all blacks less because average black test scores are lower." The analogy is inappropriate. An obvious way to evaluate a prospective employee's ability is to administer a test to that individual. In an insurance transaction the thing that must be "measured" is the probability that the insured individual will die, become sick or disabled, or have an accident within a given period of time. That chance cannot be predicted for an individual; the frequency of such events occurring can only be estimated for a group of individuals having similar risk characteristics. The latter approach makes it possible to price and to sell insurance.

The employment situation and the insurance situation are not comparable, and analogies between the two can lead to wrong conclusions.

The first sentence of the third paragraph on page 4 states: "Sex-based insurance discrimination is detrimental to and affects all women." This statement is intended to support the thesis that the extension of civil rights policy to insurance pricing would be beneficial to women. We question that conclusion. Sex-distinct premium rates result in men paying more than women for some insurance benefits and less for others, depending on the relative claim costs. Let us focus on annuities, under which women receive smaller monthly payments for a given amount of purchase price than do men. The amounts are based on mortality experience analyzed by age and sex. Under this system both men and women receive annuity payments equal in value to the purchase price (net of the insurer's expenses and a margin for profit or contingencies). If sex-distinct premiums were not being charged, women would receive annuity payments greater in value than the purchase prices they pay and men would receive annuity payments less in value than the purchase prices they pay. If a law were to be enacted that required equal annuity payments and if the result were that annuity payments made to men were reduced, women would be better off only if there were some increases in the level of annuity payments made to them. Such an increase might or might not occur, depending on the extent to which insurance companies were able to take the financial risk of selling annuities to women at rates lower than their current ones. Thus, we think a more accurate statement would be that, "Sex-distinct premium rates and benefits may in some cases (e.g., annuities) be less favorable to women than unisex premium rates and benefits would be. In other cases (e.g., life insurance and automobile insurance), sex-distinct premium rates and benefits are more favorable to women than unisex premium rates and benefits would be."

Page 7 of the report confuses an issue involving legal burdens with the question of equity in pricing in a free and competitive insurance marketplace. The last full paragraph on page 7 contains a statement of the issue in a citation from the U.S. Supreme Court in *Frontiero v. Richardson*: "(T)he imposition of special disabilities upon the members of a particular sex because of their sex would seem to violate the basic concept of a system that legal burdens should bear some relationship to individual responsibility." The case involved a statute which provided that military

servicemen's wives were automatically considered to be their dependents for certain purposes, but that service-women's husbands were considered to be their dependents only if they were in fact dependent for over one-half of their support. Clearly, the law created unfair, inequitable legal burdens. By contrast, as we pointed out with regard to the third paragraph on page 4 of the report, the use of sex-distinct premium rates does not impose special disabilities on either men or women, since each group receives full and equivalent value for premiums paid.

With regard to the *Craig v. Bowen* case, discussed on pages 7-8, it must be noted that the prohibition which the court disallowed was a question of equal access. Charging males more than females for their automobile insurance, based on accident statistics, is a question of price and value given for price, not a question of access. The situation is directly analogous to one in which an insurer would deny life insurance to all males because of the average mortality experience of their class. Such a rule would deny males access to life insurance. We support the prohibition by the states of such a practice. Basing premium rates for males on the mortality experience of all males similarly situated, on the other hand, does not operate to deny life insurance to any individual man, any more than premium rates reflecting the experience of all cigarette smokers similarly situated operates to deny life insurance to any individual cigarette smoker.

Pages 8 and 9 cite the Equal Employment Opportunity Act and a court case, *Boe v. Colgate-Palmolive Co.* The *Boe* case again is an inappropriate analogy for the cost-based pricing practices used by insurers. If all women were refused employment because many women were unable to do the weight-lifting that the job required, the employer would be denying employment to some women who could do the job. The proper course recognized by the court was to test the women individually for their weight-lifting ability. Women who could not meet the weight-lifting requirements of the job would be no more burdened in a legal sense than men who could not meet those requirements.

Similarly, the rejection of all males for life insurance would violate their civil rights by denying them access of life insurance. However, this does not mean that insurers should not be allowed to recognize that a given amount of life insurance is more valuable to a particular male insured than to a comparable female insured because the male has a lesser chance of survival and to charge prices that reflect the value of the insurance.

The large paragraph on page 9 rests on the inappropriate extension of civil rights policy to insurance pricing which we have noted. Since the average woman receiving a pension based on sex-distinct mortality rates is getting the same value as the average man who is similarly situated, it is not clear how such a pension plan operates to the detriment of women, in the accepted sense of the word. The question is not one of longevity since insurers do not know what any person's longevity will be at the time that person becomes insured. Rather it is a question of setting prices based on each person's chances of survival taking into account all of those characteristics of the person that have been shown to be effective in estimating a person's likelihood of surviving.

The rest of page 9 and the top part of page 10 cite recent court decisions, notably the U.S. Supreme Court decision in the *Manhart* case. The *Manhart* opinion focused explicitly on the narrow question of whether female employees could be required to contribute more to a pension plan than similarly situated males. The question of whether monthly pension benefits must be equal for similarly situated males and females is now before the Supreme Court for resolution. One of the decisions which is being appealed to the Supreme Court, *Peters v. Wayne State University*, upheld the employer's right to base annuity payments on sex-distinct mortality tables.

Congress is free to legislate any requirements it wishes to, within the constraints of the U.S. Constitution. Congress can, and does, establish new civil rights policy. We are merely pointing out that we believe it would be inappropriate to extend the national civil rights policy that exists today to insurance pricing because that would lead to less accurate pricing, cross subsidies between the sexes and marketplace distortions.

We agree that civil rights policy can be applied logically to insurance. The terms, conditions, benefits, requirements, and availability of insurance policies and contracts can be, and have been, required to be the same for the two sexes. However, disregarding valid statistical data about the cost of providing insurance for members of each sex leads to premiums with much larger margins for one sex than the other in cases where expected claims differ by sex. We do not believe that sound civil rights practices should require insurance companies to price products on a basis that produces excessive losses or profits from insuring either men or women.

On pages 5-7 the report tries to draw a parallel between the insurance business's present-day argument in favor of sex-distinct premium rates and arguments that were made in the nineteenth century in favor of race-distinct premium rates. These pages overlook some important facts.

First, by the time the insurance companies removed all distinctions based on race, the use of premium classes by race in combination with occupation classes could rightly be viewed as redundant and unfair. If a large part of the reason for blacks' higher mortality was due to their economic circumstances, then it was unfair to rate blacks up separately for each factor. That conclusion follows from normal insurance principles.

Second, the impact on insurers of the prohibition of distinctions by race was not as large as would be the impact today of a prohibition of premium-rate distinctions by sex. Those blacks who presented the highest risks were not really in the market for insurance, both because of a lack of perceived need for such coverage and lack of sufficient income to pay for it. (The economic situation of blacks has improved since 1900, and so has their relative longevity.) In addition, as we have explained, the elimination of the ability to classify by race left in place various other classification factors, such as occupation, which more appropriately accounted for a significant portion of the higher mortality experienced by blacks.

In view of the above considerations, we do not agree that the social policy which dictated the elimination of race-distinct premium rates in the nineteenth century also dictates the elimination of sex-distinct premium rates now. Also, we do not agree that the arguments against prohibiting sex-distinct pricing are no more legitimate than were the arguments against prohibiting race-distinct pricing.

Page 6 gives much attention to the fact that the life insurance business has drawn the same analogy (i.e., to differences between fire insurance rates for brick houses and those for wooden houses) in defending sex-distinct pricing that was drawn in a magazine article in 1891 in defense of race-distinct pricing. The life insurance business has used the brick-vs.-wooden illustration as an example of cost-based pricing in insurance which, we trust, virtually everyone understands and accepts. The analogy is apt with respect to sex-distinct premium rates or any other classification criterion that reflects cost-based pricing.

SUMMARY

In sum, civil rights policy should not be extended to require that sex-distinct premium rates be prohibited. The assertions in the Committee report that sex-distinct pricing is detrimental to all women is wrong. In fact, the use of sex distinctions in insurance pricing results in more accurate and fairer prices for both men and women.

EXHIBIT 1

MORALITY DIFFERENCES BY RACE, RELIGION, OR ETHNIC BACKGROUND

Page 10 of the report mentions the mortality rates among blacks, Mormons, Seventh-day Adventists, and Jews.

With respect to blacks, three important points must be mentioned.

First, although it is true that the black-white mortality differentials in the data shown on page 7 of the report are greater at many ages than the male-female mortality differentials, those excesses are outweighed by excesses in the other direction at the high ages. Although no aggregate mortality rates are given in the report, we can get an idea of the overall picture from the following data for 1979 (from Monthly Vital Statistics Report, National Center for Health Statistics, September 30, 1982):

Age	Proportion of persons dying during 5-year interval beginning at specified age				Expectation of life at specified age					
	Female	Male	White	Black	Female	Male	F-M	White	Black	W-B
25.....	0.0035	0.0100	0.0059	0.0127	54.2	47.3	6.9	51.2	46.0	5.2
35.....	0.0063	0.0122	0.0078	0.0202	44.6	38.1	6.5	41.8	37.2	4.6
45.....	0.0159	0.0292	0.0202	0.0416	35.3	29.1	6.2	32.5	28.8	3.7
55.....	0.0371	0.0703	0.0499	0.0871	26.5	21.0	5.5	24.0	21.4	2.6

From the above it can be seen that, although the white-vs.-black death rate differentials are larger than the female-vs.-male death rate differentials for five-year in-

tervals beginning at ages 25, 35, 45, and 55, the expectation-of-life differentials are substantially larger for female-vs.-male at all four ages. While life insurance premium-rate calculations are not, technically, based on life expectancies (they are based on mortality rates for each year of age for which coverage may be provided by the policy), for most policies the life expectancies give a better indication of relative costs than do the mortality rates for small age intervals.

The second point that must be mentioned is that blacks still constitute a much smaller segment of the life-insurance market than do women. Women's policies now represent over 20 percent of the amount of individual life insurance purchased each year, and the proportion is continuing to increase.

Third, blacks who, unfortunately, cannot afford to buy much life insurance are to a great extent the ones who are subject to the highest mortality. The January 1975 number of Metropolitan Life's Statistical Bulletin shows that in 1950 the mortality for males in the lowest of five social classes was nearly double that of the two highest classes. Specifically, the mortality ratio for males in Class V (which included laborers) was 153 percent, as compared to 82 percent and 85 percent for the top two classes. Thirty-nine percent of nonwhite males who were classified were in Class V, compared with only nine percent of white males.

According to inter-company mortality studies, overall morality among females insured in the standard class has, during a period of the most recent several years, held steady at about 60 percent of the corresponding male mortality. That is a significant difference for life insurance purposes. Of course, since life insurers do not know the racial characteristics of their insureds, we do not know the corresponding ratio by race.

In consideration of the above, it is clear that blacks can be absorbed in the same rating class as whites with far less economic dislocation than would be the case if males and females were lumped together.

The report also asserts, on page 10, that sex is no more legitimate a predictor of losses than is religion, which is not used as an insurance rating factor.

The article on Mormons that is cited on this page indicates that the state of Utah, with a population which was about 70 percent Mormon, had a 1969-71 average aged-adjusted total death rate per 100,000 of 787, compared to 891 for the United States. The difference could, possibly, be explained by the fact that the estimated 1970 per capita consumption of cigarettes was barely more than half for Utah of what it was for the U.S., and the amount of alcohol consumption was less than one half. Both cigarette smoking and excessive alcohol consumption are used as rating factors in life insurance. It seems possible that the use of these factors is giving effect to most or all of the superior longevity among Mormons, on a basis which is fairer than a rating by religion (because it rates by factors which, most people would agree, are more closely correlated with longevity than is religion).

Although age-adjusted total death rates for Seventh-day Adventists are not given in the cited article, the article does point out that Seventh-day Adventists abstain "almost completely" from the use of "tobacco and alcohol".

The article on Jews that is cited on the same page reports on studies of Jewish mortality that were done in only three cities in the U.S.: Detroit, Milwaukee, and Providence. The non-Jewish populations with which those populations are compared are the Michigan, Wisconsin, and Rhode Island white populations and the U.S. white population. Those populations, including as they do rural as well as urban areas, are not strictly comparable. In any event the comparison of the three Jewish populations studied around 1960 with the U.S. white population gives the following expectation of Life Figures:

	Males			Females		
	At birth	Age 0-64 ¹	At age 65	At birth	Age 0-64 ¹	At age 65
American Jewish	67.0	56.4	10.6	71.9	59.0	12.9
U.S. white	67.5	54.7	12.8	74.4	58.4	16.0

¹ This is the life expectancy at age 0 excluding survival beyond age 64 from the calculation.

These figures do not show a consistent pattern, nor are the differences as large as the corresponding differences by sex.

EXHIBIT 2.—ACCIDENT MEANS BY SEX AND ANNUAL MILEAGE

[Renewal applicants, 6 year record] 1975—Annual mileage

	Under 1,000	1000- 4,999	5,000- 9,999	10,000- 14,999	15,000- 19,999	20,000- 29,999	30,000+	Mean total acci- dents	Total miles
Male	0.40	0.39	0.39	0.40	0.44	0.52	0.58	0.43	16,000
Female	.10	.23	.29	.35	.33	.39	.40	.28	8,000

Source: The California Driver Fact Book, Table 15.

ACCIDENTS PER PERSON

by Sex and Mileage

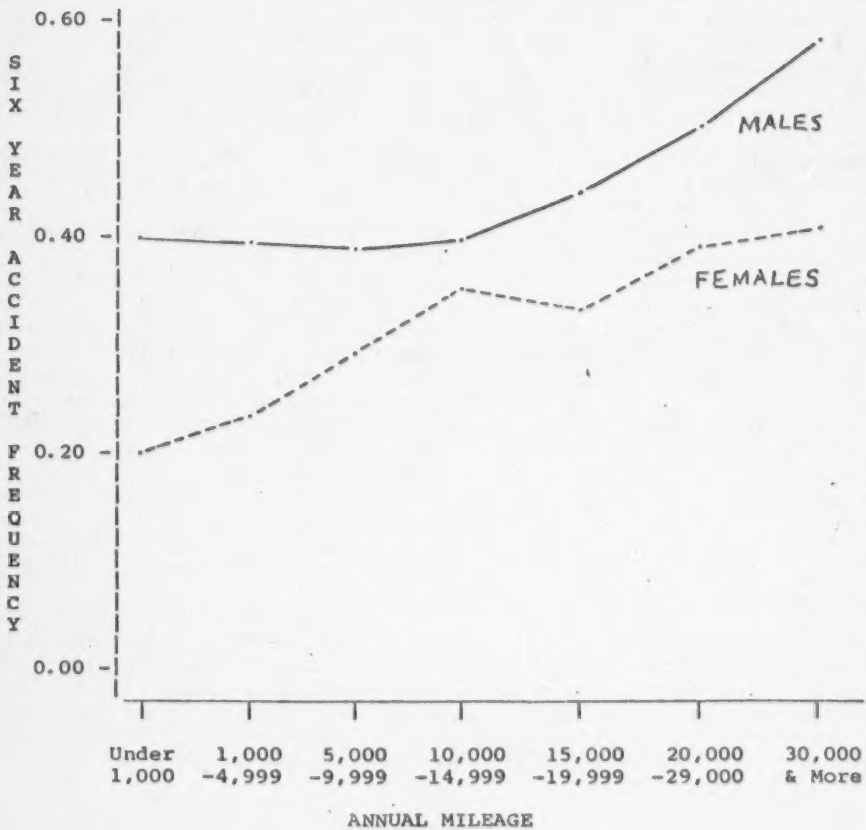
Source: California Driver Fact Book
Table 15

EXHIBIT 3.—ACCIDENT RECORDS

[By sex and annual mileage]

	Males				Females			
	Number	Average age	Average mileage	3 year accident record ¹	Number	Average age	Average mileage	3 year accident record ¹
Annual mileage:								
Up to 2,499.....	221	49.0	1,480	0.163	619	42.2	1,495	0.079
2,500 to 4,999.....	370	49.1	3,445	.268	1,046	41.7	3,323	.103
5,000 to 7,499.....	877	46.6	5,872	.223	1,733	41.5	5,562	.152
7,500 to 9,999.....	598	44.4	8,274	.229	558	41.7	8,185	.179
10,000 to 14,999.....	2,713	41.9	11,240	.271	932	40.4	11,026	.242
15,000 to 19,999.....	1,436	40.3	15,860	.319	241	39.1	15,652	.249
20,000 to 24,999.....	1,023	38.9	20,638	.345	127	41.1	20,839	.299
25,000 to 29,999.....	482	39.4	25,437	.353	45	38.5	25,537	.277
30,000 to 39,999.....	618	38.6	31,982	.350	33	38.6	32,041	.271
40,000 to 49,999.....	244	37.9	41,592	.430	8	31.6	42,506	.273
50,000 plus.....	442	38.4	70,616	.563	13	31.4	58,926	.318
Total.....	9,024	41.8	17,671	.305	5,355	41.3	7,211	.163

¹Source: U.S. Department of Transportation, Federal Highway Administration (with California Department of Public Works), The Effects of Exposure to Risk on Driving Record, June 1973. NTIS #PB 236 483.

EXHIBIT 4.—DRIVING PERFORMANCE COMPOSITE INDEX (DPCI) ADJUSTED FOR AVERAGE ANNUAL MILEAGE DRIVEN

	Male	Female	Both sexes
Age group:			
16 to 19.....	1.59	0.80	1.32
20 to 24.....	1.81	1.17	1.69
25 to 29.....	1.25	.98	1.19
30 to 34.....	.91	.80	.88
35 to 39.....	.87	.68	.79
40 to 44.....	.78	.65	.73
45 to 49.....	.71	.55	.64
50 to 54.....	.65	.55	.58
55 to 59.....	.59	.48	.53
60 to 64.....	.59	.44	.50
65 to 69.....	.70	.50	.61
70 and over.....	.89	.84	.83
All ages.....	1.11	.76	1.00

Source: Study of California Driving Performance (Phase II), a research project of the Rate Regulation Division, California Department of Insurance.

EXHIBIT 5

MORTALITY DIFFERENCES BY EDUCATION OR MARITAL STATUS

Page 16 of the report asserts that the difference in life expectancy between highly and poorly educated women is greater than the differences between the sexes. We are aware of a study of 1960 mortality by education. The mortality ratios (which are in a sense the opposite of life expectancies) are as follows: ¹⁰

¹⁰ Introduction to Demography, Mortimer Spiegelman, 1968, 96.

	Males (percent)			Females (percent)		
	25 and over	25 to 64	65 and over	25 and over	25 to 64	65 and over
Years of school completed:						
Total	100	100	100	100	100	100
High school:						
1 to 3 years	102	103	98	88	91	94
4 years	98	91	98	92	87	94
College: 1 or more years	89	77	100	73	81	70

We have omitted levels of education below high school from the above, because persons who have completed less than a year of high school are not a significant factor in the individual life insurance market.

In the above table the differences between the ratios for college and the ratios for "high school" are much smaller than the overall sex differential among standard insured lives, which is 60 percent vs. 100 percent.

The National Center for Health Statistics informs us that it has not had a study on education done since the one described above.

Page 16 also asserts that the difference in life expectancy between married and single men is greater than the difference between the sexes. A study of deaths in 1959-61, excerpted on page 91 of Spiegelman's book, gave death rates per 1,000 such as the following:

Age group	Single	Married	Widowed	Divorced
White males:				
25 to 29	2.4	1.2	5.4	4.4
45 to 49	11.5	6.0	13.0	20.3
65 to 69	53.0	36.2	55.3	72.6
85 and over	237.7	198.1	256.6	267.1
White females:				
25 to 29	1.3	0.6	1.4	1.7
45 to 49	4.9	3.3	5.1	5.5
65 to 69	20.7	19.7	24.1	24.5
85 and over	213.4	139.3	211.1	199.9

Spiegelman states that the low death rates among married persons (especially males) are "commonly attributed to the selection, by marriage, of the healthier lives, and to the more healthful environment of family life." Presumably, males who get married also tend to have greater economic means and healthier lifestyles than those who do not marry. Spiegelman gives figures that suggest that the rates for the divorced were overstated because of errors in the reporting of individuals' status.

To the extent that the marriage differential is due to the selection of persons who have good health, healthful lifestyles, and favorable occupations, it is being reflected in insurers' ratings for life insurance. Even if it were clear that there is a significant mortality differential that is not already being reflected in the premium rates, it would be administratively difficult to reflect it in life insurance premium rating because of the unpredictability of future marital status. In present-day society, too, the lines between married and single have become blurred.

By our best information, no study of mortality by marital status has been done since the one discussed above.

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION

Farm Bureau would like to take this opportunity to comment on S. 372, the "Fair Insurance Practices Act." The bill very simply bars insurers from discriminating on the basis of sex for all types of insurance.

The American Farm Bureau Federation is the nation's largest general farm organization with a membership of over three million member families in 48 states and Puerto Rico. Farm Bureau policy is developed by the producer members at the county, state, and national levels of the organization.

Farm Bureau policy adopted by the voting delegates at their 1983 annual meeting states:

"Decentralization of power and responsibility in the federal government should be encouraged. Public functions should be performed by the qualified unit of government closest to the people without coercion by administrative agencies of higher units of government."

"Historically, the regulation of automobile insurance has been a state responsibility. Farm Bureau believes this system has served us well and should be retained. We oppose any shift of responsibility in this area to the federal government."

Farm Bureau opposes passage of S. 372 for the following reasons:

(1) Although the legislation is being billed as a civil rights issue, it rejects the principle of insurance—that premium rates should reflect an insured's potential for loss.

(2) One of our major concerns with the legislation is its intrusion in state regulations by the federal government. The insurance industry is presently the one major business activity that is still under state jurisdiction rather than federal regulation. This legislation would invalidate any state law or regulation now requiring gender-based classification for rate setting.

(3) Automobile insurance premiums for women would increase substantially. In fact, a 16 year old woman who is the principal operator would incur a rate increase of 59 percent (\$414 annually).

In addition to the changes in premiums, the legislation could have a substantial market impact. Because the rate charged to men would be inadequate there would be a disincentive to insurers to assume the risk. Therefore, it could be especially difficult for young males to obtain insurance coverage.

(4) Life insurance premiums for women would increase. Presently, women pay less for life insurance because, as a group, they live longer.

(5) Health insurance premiums for males would increase as would disability insurance premiums. On the other hand, women would pay more for health insurance as a result of including mandatory maternity benefits.

(6) Pension plans would become more costly. Because most pension plans are provided through employer sponsorships and because many of the pensions are public employee retirement programs, the legislation probably would lead to higher taxes to fund the public plans.

(7) The bill would pose a huge administrative burden on insurers to put in place the mandated changes and advise policy holders of those changes. Eventually, the cost of this charge would be passed along to the consumer.

Farm Bureau cannot support S. 372. While the legislation is said to be a "nondiscrimination" bill for women, it is interesting to note that changes in insurance rates would mean a financial loss—rather than a gain.

Although some groups have indicated that women are willing to "take their lumps" and suffer financial loss, we cannot say the same. Our sizable women's group—which represents a good cross-section of women across the country—disagrees strongly with those who feel this bill removes discrimination from women.

Beyond the previously-mentioned opposition points, and more important than those seven points, Farm Bureau is convinced the bill really has no purpose. The insurance industry is presently functioning on an actuarially sound basis and has been serving men and women alike very fairly and equitably. To put it very simply, "let's not fix it if it's not broken."

Farm Bureau appreciates this opportunity to present its views on the Fair Insurance Practices Act.

STATEMENT OF THE AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, AFL-CIO

This statement is presented on behalf on the American Federation of State, County, and Municipal Employees (AFSCME), representing over one million federal, state and local government employees across the nation.

AFSCME strongly supports enactment of S. 372, the Fair Insurance Practices Act, introduced by Senators Packwood, Hatfield and Hollings. S. 372 would prohibit discrimination in all insurance policies, including life, automobile, health and disability. AFSCME's 400,000 women members will generally benefit from this legislation because of its effects both on group insurance and retirement annuities provided by public employers and on other types of insurance policies which are purchased individually.

Our support for this legislation is consistent with a long-standing AFSCME policy on equal rights. We believe that arbitrary barriers of age, race and sex should be removed from all terms and conditions of employment as well as from other facets of society.

AFSCME is especially proud of its record on women's rights. We were among the first major unions to endorse the Equal Rights Amendments in 1972.

AFSCME is a pioneer and a leader in the struggle for pay equity for the millions working in underpaid female-dominated occupations. AFSCME is presently the only organization with an active litigation program on this issue.

Insurance rates and benefits are but one more economic area in which women are placed at a disadvantage. In *City of Los Angeles, Department of Water and Power v. Manhart*, the Supreme Court has already ruled that employers using sex-based differentials in setting rates for their pension plans were in violation of Title VII of the 1964 Civil Rights Act. In its effect on pensions, annuities and other forms of insurance provided by employers, S. 372 is consistent with Title VII's broad prohibitions against discrimination in all terms and conditions of employment.

Title VII prohibits sex discrimination no less than discrimination based on race, color, religion or national origin. Nevertheless, the insurance industry has gone to great lengths to justify discriminatory practices based on sex which they agree would be discriminatory were race or religion the issue. Despite the fact that white men outlive black men the insurance industry does not discriminate in rates or availability of coverage on the basis of race, color, religion or national origin because it would be contrary to "public policy and general ethics." We would remind the insurance industry that sex discrimination is also contrary to public policy and general ethics.

The industry's sex-based rate and benefit policy is defended because of differences in life expectancy between men and women which the industry assumes to be biological. Actually, approximately 86 percent of women retiring at age 65 live no longer than 86 percent of the men. So all women are required to pay higher premiums or receive lower benefits because 14 percent of them will outlive 14 percent of the men.

The insurance industry has been able to survive and flourish without race-based rates and benefits. There is no reason to suppose that eliminating sex as a necessary critical in classifying risk will cause the industry irreparable harm. Factors other than sex are more reliable indicators of longevity.

The industry claims that their discriminatory practices are based on sound actuarial grounds. Yet they compound the discrimination against women by using a full six to nine year setback in pensions and annuities where women's greater longevity is a disadvantage. But in life insurance where women's increased longevity is an advantage, a three year setback is common practice. Therefore, the premium savings in life insurance for women is often insignificant.

Other insurance industry practices are blatantly discriminatory and are based on the stereotyped notion that women do not need any protection except that which their husbands may provide.

For example:

Some insurance companies require that a wife prove her husband financially dependent upon her before she can cover him under her health insurance.

Housewives and other women working out of their homes often cannot get disability coverage, while men who work out of their homes can get such coverage.

Women do not have equal access to business insurance.

Some insurance companies limit the amount of life insurance a married woman can purchase to the amount of her husband's coverage.

Although there is no conclusive evidence that women are more likely to become disabled than men or that they stay disabled longer, women often have trouble getting disability insurance. Where it is available women may pay more for identical coverage than men in the same occupation.

AFSCME believes that the disparate treatment of women by the insurance industry is firmly grounded in discrimination—no matter how the industry attempts to rationalize its behavior. Most of these practices are holdovers from pre-Civil Rights Act days—before sex discrimination was a violation of the law. Two decades have now elapsed since sex discrimination was declared to be contrary to national public policy. It is time to pass this legislation and end discrimination in a key economic area.

Whenever reforms have been proposed—minimum wage laws, OSHA, pay equity—the cost issue is always presented as a reason not to act. However, employers invariably do comply and the dire predictions of economic ruin never materialize.

- Opponents of S. 372 are raising the same specter of excessive cost as a justification for continuing to discriminate. We feel confident that the industry can amend its policies and remain solvent. The cost estimates we have seen appear overstated.

AFSCME is nevertheless aware that questions have been raised concerning the cost for state and local governments in fully implementing the bill in its present form. Concern has been expressed about bringing state and local government retirement systems into full compliance. While the majority of state and local systems are defined benefit plans which long have had equal basis benefits for men and women, they may be affected if optional forms of payment have been elected by plan participants. These options frequently provide unequal benefits, and equalization may cause costs to rise, especially if they are made retroactive.

Many state and local retirement systems are already dangerously underfunded, threatening not only their own fiscal stability and the rights of plan participants but also the fiscal integrity of state and local governments as well. Accordingly, we urge that the cost impact and its implications be thoroughly explored by the Committee in its deliberations on S. 372.

In conclusion, AFSCME supports enactment of S. 372, the Fair Insurance Practices Act. We believe it is only fair that basic civil rights protections be extended to insurance and pensions so that women will be treated equitably in an area so critical to their economic security.

STATEMENT OF E. PAUL BARNHART, F.S.A., M.A.A.A., INDEPENDENT CONSULTING ACTUARY

I make this statement on behalf of all individuals who must pay for insurance, particularly women. Few, if any, actuarial experts have testified at these hearings as advocates of the individual consumer.

I believe I am particularly qualified to do this. As a nationally recognized independent actuarial expert with nearly 30 years experience, I have served as a consultant and advisor to buyers of insurance, to insurance companies, and to state regulators of insurance. I currently serve several associations whose individual member buyers of insurance, together with their dependents, number more than one and a half million Americans.

I am a past-president of the Society of Actuaries, and currently serve as Chairman of the Council of the Health Section of the Society of Actuaries. I am Vice-Chairman of the Committee on Health Insurance of the American Academy of Actuaries, and chairman of its Subcommittee for Liaison with the National Association of Insurance Commissioners.

The views stated here, however, are my own. I am not serving as a spokesman for any association, committee or organized group, and in particular not for the insurance industry. I wish to represent no special interest group, but only the interests of all Americans who must pay for needed insurance.

Enactment of this legislation would be a national tragedy.

First, it is massively unfair to women. It would not put an end to unfair discrimination against women, nor to the detrimental economic effects of such discrimination. The reason is simple: under this legislation, women in the aggregate would pay hundreds of millions of dollars more for insurance, every year, than they do now. And they would pay between 1.5 and 2 billion dollars more, every year, than they would pay if all unfair discrimination were really eliminated from insurance pricing.

One way to achieve that would be to enact a Federal law that requires that sex be fairly taken into account whenever the actuarial data reveals significant differences in insurance costs by sex. Unfair discrimination against women still exists. Women are usually overcharged for disability insurance and for Medicare supplement insurance. They are often overcharged for life insurance and auto insurance. Historically, the insurance industry has been quick to recognize areas where women's costs are higher than men's and to charge more; slow to recognize areas where women's costs are lower and to charge less.

This problem could be solved by a law that requires fair insurance premiums in relation to sex. Instead, the supporters of S. 372 are ignoring simple facts. They foolishly seek to pass a law that prohibits sex as a factor in insurance pricing, in spite of massive differences in cost by sex that have long been known to exist. The result is that women will pay much, much more in the aggregate. Women would be the victims of this law, not its beneficiaries. Legalized economic inequity would be the permanent result, not "economic equity" as claimed by supporters of S. 372.

Second, S. 372 would also lead to higher total insurance costs for the entire buying public. Again, the reasons are simple:

(1) Under forced "blending" of different costs by sex, insurers would need to build in an added margin for error, since they would not be able to predict exactly the percentages of women vs. men buying any particular product. They would have yet one more unknown to price for: that means more margin for error.

(2) Even more important, when insurers are deprived of the ability to take known major cost factors into account in setting the price (and sex is one of the most significant), they have to underwrite every application more carefully and spend more on such things as medical exams and doctor's statements. Therefore the cost of underwriting and issuing insurance to all buyers will rise, and with added trouble and inconvenience to buyers as well. Result: both the price of insurance, and the inconvenience of obtaining it, will rise.

Third, S. 372 is a giant step backward, toward the destruction of the risk classification system that has made insurance economical and convenient for individuals to buy. It is a major backward step in the direction of prohibiting all rate classification in insurance. If such a major factor as sex is prohibited as "discriminatory" and contrary to "public policy", then next will come age, condition of health, occupational hazards, ad infinitum.

The rising costs of "margin for error" and of underwriting the applicant, described above, would be pushed to the extreme. Thus, if age, in addition to sex, were prohibited as a rating factor, how many companies would still issue life insurance "non-medically" (without requiring a medical examination) to anyone? This is but a single example of the many inevitable cost increases.

The end result would be much the same as if Congress passed a law prohibiting assembly line manufacture of cars: all cars must be "custom hand-made". As everybody knows, this greatly increases the cost. Individually purchased insurance could similarly become just too expensive for many people!

Fourth, the regulation of insurance, which is the responsibility of the states, would be thrown into total chaos and into an expensive process of basic reconstruction. Valuation standards would be rendered inapplicable; massive and confused re-filing of premium rates would inundate state insurance departments. And, again, at greatly increased cost eventually borne by the public.

Total disregard (or ignorance) of this entire regulatory problem by the Bill's sponsors is evident from the fact that S. 372 proposes a mere 90 days, after enactment of the law, for the entire insurance industry to "comply". Ninety days is ridiculous; it would take more like 2 to 3 years. And again, for what purpose, for what benefit, to anyone?

S. 372 (and companion House Bill H.R. 100) are foolish, ill-conceived proposals. They ignore economic reality, for the sake of dubious and highly debatable social objectives. Congress must begin to heed the actuarial experts and carefully weigh the costly consequences of these proposals. Otherwise an incredible fiasco will have been enacted into Federal law; an enormous blunder without redeeming social or economic merit of any kind.

Attachment.

"WHITE PAPER" TO THE CONGRESS OF THE UNITED STATES CONCERNING "FAIR INSURANCE PRACTICES ACT" AND THE "NON-DISCRIMINATION IN INSURANCE ACT"

(This paper has been prepared by E. Paul Barnhart, F.S.A., M.A.A.A., an independent actuary. It is entirely of his authorship and expresses his own professional conclusions and opinions.)

Senate Bill S. 372 and House Bill HR-100, introduced into the 98th Congress, both seek to add gender to the list of factors already prohibited as a basis of classification for insurance rating purposes: race, color, religion and national origin. Proponents of such legislation argue that use of gender as a factor in insurance rate classification systems is contrary to desirable "public" or "social" policy, and that gender is merely an easy and convenient factor that is in fact arbitrary and has been detrimental and unfair to women. They presume that prohibition of sex as a rating factor will therefore eliminate such "unfair discrimination" and result in positive economic benefit to women and to men as well.

The purpose of this paper is to demonstrate, through common sense reasoning as well as on the basis of expert actuarial knowledge and opinion, that the very opposite result must be expected.

Enactment of either of these bills will be economically detrimental to women, because it will halt in its tracks the substantial progress now being made toward com-

plete fairness in insurance rates for women. It will allow the insurance industry simply to abandon this objective and to escape under the cover of "unisex" rates.

Further, such enactment will drive up the cost of individually purchased insurance for everyone. It will increase the cost of the underwriting process in individual insurance, and through its forced "blending" of substantially different insurance risks, will lead to conservative "averaging" of widely unequal costs, thereby creating higher averaged prices.

Further, such legislation, because it ignores the realities of insurance risk differences, and because it arbitrarily interferes with free marketplace and competitive forces, will create artificial instabilities in the individual insurance market, along with new and subtle opportunities for discrimination and profiteering. Whenever government imposes artificial and unrealistic restraints on free marketplace competition, such results inevitably emerge. Government's response is invariably increasingly complex and expensive regulation of the industry affected, driving up industry costs and prices even more, while most often the effect is to exacerbate, rather than to eliminate, the problems created by the misguided legislation itself in the first place.

Finally, such legislation will impair the continued gathering and dissemination of knowledge, of enormous value to the public as well as to the industry, concerning the mortality and morbidity of men and women. Facts and causes relating to death and disability, as well as important trends in such facts and causes, vary greatly between men and women, and the "blending" of statistics and information relating to mortality and morbidity that will obviously result from mandated "unisex" insurance rating will be of reduced value, if not rendered downright misleading and even less than worthless, to those who rely on such information in working toward better health and longevity for the population as a whole.

Should there not be some clear point and purpose to "public" or "social" policy? What is the purpose here? Merely to assure that men and women are treated identically, no matter what is involved; no matter how artificial and unrealistic the definition of "equal"; no matter how detrimental the consequences to both sexes? This can be nothing else than blind "ideology" that has taken leave of common sense! I pray that this paper will help sensible lawmakers to foresee the consequences of "unisex" insurance legislation clearly, and that the Congress will avert the pointless and foolish tragedy that this proposed legislation would bring upon the insurance buying public. I hope the following discussion will clarify why these adverse consequences will occur.

A. INDIVIDUALLY PURCHASED INSURANCE VERSUS EMPLOYER PAID BENEFIT PLANS

At the very outset, let me make it clear that I am referring to "individually purchased", or simply "individual" insurance. By these terms I mean insurance which is wholly or largely selected and paid for by the insured individual. I do NOT mean any insurance or benefit plan wholly or largely paid for by an employer or other "third party". Such plans are subject to entirely different considerations, since the individual is not selecting his or her own program and paying the price. Court decisions affecting such "employee benefit plans", based largely on the Civil Rights Act of 1964, have been concerned with the issue of "equal pay for equal work", and have had nothing to do with the issue of risk and rate classification in private individual insurance. Many supporters of S. 372 and H.R. 100 have seriously confused this issue. When it comes to private individual insurance, "equal pay for equal work" has nothing to do with the question. The real issue is whether or not it is "fair" for insurers to develop rate classification systems under private individually purchased insurance that recognize known, substantial, measurable differences in the cost of the insurance risk according to various classes of persons (identified as to age, sex, occupational hazard, health history, habits, etc., etc.); or whether it is "fair" only when the price of insurance is the same for ALL "risk classes" (or for certain arbitrarily selected risk factors, such as in this case, sex) regardless of the fact that the actual costs among these various "classes" are widely different. Let us at least be clear as to what the real issue is!

B. RISK CLASSIFICATION IN THE INDIVIDUAL INSURANCE MARKET

I trust there is no disagreement with the principle that individual insurance necessarily involves a voluntary "pooling" of risks: substantial numbers of people must agree to come together and share the cost of the losses of a few, by all paying their share, or "premium" into the insurance fund. I hope there is also no disagreement that in the individual insurance marketplace, where each individual can pick and choose and can elect whether to buy or not to buy, the "fund", that is the insurance

association or "company", MUST have available to it some practical means of selecting or "underwriting" those individual risks that it is willing to accept. It must be able to decline applicants, and/or to classify acceptable applicants into different "risk classes" subject to different prices in accordance with the differing cost of risk. Insurance history is replete with examples of the inevitable failure of schemes that fail (or refuse) to recognize this simple principle (for example, the failure of the "assessment societies" of the 19th century).

The only kind of insurance scheme that can ignore this basic principle is one that is mandatory, under which the individual has no choice, such as the U.S. Social Security system, or a wholly employer paid program of substantial size, under which employment automatically mandates participation.

If reasonable, thinking people can agree on these two basic principles, then (unless one's aim is simply to DO AWAY with private, voluntary insurance altogether) the real issues boil down to these two:

(1) What are the available, practical and reasonably economical methods of classifying risks (as to the price of insurance, and/or the insurer's decision to accept or deny coverage), and

(2) What is the system or method "fair" or "unfair"?

Taking Question 2 first, it would seem that the system must be judged "fair" if the price charged to each class is equitable in proportion to the "risk" or average cost of insurance related to that class. Those who think otherwise surely must bear the burden of proof as to why some other concept or measure of "fairness" is preferable; or else to show why ulterior considerations should override the concept. I will return to the fact that some supporters of "unisex" legislation, in particular, do argue that there is an "ulterior" consideration: namely, that women have NOT been treated fairly, and consequently the individual insurance industry should be deprived of its right to use the factor of sex in risk classification. I intend to show that such an outcome will NOT benefit women generally, nor in all probability will it lead to "fairness", either. Hence it WILL NOT SOLVE the "ulterior" problem that these supporters perceive to exist.

Returning to Question 1, it is entirely conceivable that a voluntary insurance scheme could function and survive without any formal "risk classification" system at all. In fact, this is essentially what Lloyds of London does, when its underwriters insure "rare and unusual", even unique risks. They assess the odds, by extensive appraisal and investigation, by intuition, or by both, and quote their price. Some supporters of S. 372 and HR-100 think it better to do it this way generally: underwrite all applicants for insurance on the basis of "individual risk characteristics", without reference to formal risk or rate classification tables at all. they view ALL such tables as "arbitrary" or simply "convenient".

But there are enormous problems confronting any such approach, applied to insurance generally and in the mass individual market that exists in the U.S.:

(a) It would be very expensive. If insurers were not able, to a broad extent, to underwrite in reference to clearly and easily defined risk and rate tables, the only alternative would be expensive investigation and assessment of every applicant's "individual characteristics". Health records; medical examinations; inspection reports and interviews; review of past accident or claim history of the individual; on an on.

Development of the risk classification systems generally in use in the United States are largely the result of seeking and finding ways to underwrite more economically. Most life insurers, for example, have evolved very specific rules for issuing certain policies "non-medically"; that is, without requiring an expensive medical examination. Such rules are specifically related to age, amount of insurance applied for, and other very clearly identified risk factors. The result has been lower prices of insurance for the American public, along with greater convenience to the public in obtaining insurance. "Convenience" is indeed an aspect of risk classification systems; but it is convenience (and economy) for the buying public, far more than for the insurers.

(b) It would be very difficult to assess, except in the very broad context of whether a given insurer was financially successful or not. If there were no "risk classes", obviously insurers would be faced with a formidable problem in analyzing their own underwriting results, in improving on the system, or in experimenting with new factors or underwriting methods. "Individual risk characteristics" can only be assessed and evaluated if they are classified in some practical manner. We are right back to risk classification.

(c) It would be very difficult (and expensive) to regulate. The insurance industry is a regulated industry, and much of that regulation operates directly in relation to risk classification. Those who want to do away with risk classification, or to restrict arbitrarily the factors that may be measured, had better have some clear idea as to

how they think the industry is to be regulated. I seriously doubt that many of them propose that it be deregulated.

The regulation of insurance is, of course, largely the responsibility of the states. Perhaps the Congressional sponsors of unisex legislation don't much care about the difficulty and expense of regulation that would be left in the wake of enactment of such a law. Perhaps they merely want to get it passed and then turn and run, leaving it to the states to sort out the massive confusion that such a law would create.

Speaking of state legislation and regulation in the area of unfair discrimination based on sex, I wonder how much appreciation exists in Congress concerning the vast progress made in the last 15 to 20 years? Many of the unisex advocates still charge that massive "discrimination by sex" continues to be "prevalent", in all sorts of ways: in policy provisions, in plans and amounts of coverage available, and so on. That was indeed true, 20 years ago.

But today, in most states (which as a practical matter means everywhere, for multi-state insurers) the ONLY point at which any distinction by sex is permitted is in premium rates, and the states by and large require actuarial justification of any such differences based on demonstrated differences in the cost of the risk, by sex.

At the very least, when the unisex advocates continue to howl that "unfair discrimination" remains "prevalent" (or as they of course prefer to say, "discrimination" remains "prevalent"), Congress should require that they document their case. The charge of unfair "sex discrimination" leveled against the insurance industry has largely taken the turn of simply presuming the industry guilty unless it can prove itself innocent. The accusers are seldom asked to prove anything.

(d) Finally, it would be virtually impossible to judge how "fair" or "unfair" such a "classless" system might be! Since supporters of S372 and HR-100 are presumably interested in fairness, they had better have some idea as to how "fairness" is going to be assessed, in the future, with respect to sex; if sex itself is a prohibited risk classification factor! Race is a prohibited risk classification factor now, and it has been made illegal, generally for insurers even to ask the race of an applicant. If sex is now to be prohibited as a risk factor, and insurers as a result are prohibited from even asking or recording the sex of the applicant (or even discontinue asking voluntarily, on the ground that no use can be made of the information anyway), how then are the watchdogs of "non-discrimination as to sex" going to assess whether such discrimination has been eliminated? Are they so naive as to seriously believe that prohibition of the use of sex in risk classification will eliminate sex discrimination? I suggest that it will only encourage more such discrimination, in various subtle ways. Achievement of the goal of non-discrimination as to sex would be more attainable under legislation that requires sex to be taken into account whenever sex is known to be a significant risk factor! Those who really want to eliminate "sex discrimination" in insurance should be advocating mandatory classification by sex, rather than its prohibition, whenever the facts show sex to be a factor significant to the cost of insurance for a particular type of insurance.

Any practical line of reasoning leads to some reasonably convenient, clearly defined, equitable and economical system of risk-classification in individual insurance. Known or discovered factors that have a clear and significant impact on the cost of insurance should be permitted, in the absence of clearly valid and relevant ulterior considerations that can actually be helped if a given factor is prohibited. (Race, in my judgment, is an instance of such a factor. I believe its prohibition as a risk classification factor has indeed served to implement valid social objectives. Not so sex, as will be further demonstrated in this paper.)

What then are the major factors that have evolved within existing American risk-classification systems used in individual personal insurance? At least these: age, sex, condition and history of health, occupational class. Consider life insurance for a moment. Except over very wide ranges of age, sex is every bit as significant as age in determining probable death rates, that is, in evaluating the risk. At age 35, women experience death rates as low as men of 18. Over a considerable range of ages, female death rates are less than half those of men. If it is valid "social policy" to prohibit sex as a risk classification factor, why not age? Why not health history and condition? Why not, again, any factor whatever? Opponents of the risk classification system have in fact already targeted age as the next battleground, and have openly declared that once sex has been eliminated, age will be the next factor to be attacked. And on and on it would go until we again reached insurance underwriting with no risk classes at all and with all of the expense and impracticality associated with such an approach. It is not the insurance industry that has "arbitrarily" adopted sex as a factor in risk classification. It is rather those who seek to prohibit sex as

a factor, who are acting "arbitrarily". It is not valid "social policy" they are serving. It is mere political policy that will fulfill no valid "social" or "economic" goal.

C. SPECIFIC EXAMINATION OF SEX AS A CLASSIFICATION FACTOR, AND THE EFFECT UPON BOTH WOMEN AND MEN IF IT WERE PROHIBITED

Most, if not all, of the estimates of cost and of distribution of the cost of insurance to the public, as a result of passage of S 372 or HR-100, have been constructed in terms of mass aggregates: increases or decreases for all men as a class, or for all women as a class. Some of these have concluded that men in the aggregate, and women in the aggregate, may still pay about the same as now, for all kinds of insurance combined. Other estimates have concluded that women would pay somewhat more than now under mandatory unisex rating.

Most or all of these aggregate cost approaches are, however, defective and highly misleading, for several reasons:

(1) They view redistribution of cost in relation to the presently existing situation, assuming that the total relative volume of insurance purchased by each sex would remain essentially unchanged. This is debatable, at the very least.

(2) They ignore two highly significant trends that are now distinctly in progress, favoring women:

(a) The fact that women today represent a rapidly growing market for life insurance and disability income insurance. Since women presently pay less than men for life insurance at all ages, as the relative volume of life insurance in force for women grows, women increasingly will become the greater losers under a law that requires them to pay higher prices in order that they be charged the same rates as men, in spite of their dramatically lower death rates.

Disability income insurance is a mixed bag: women pay higher rates than men at lower ages; but they pay lower rates at higher ages. Some of the estimates have implied that women would pay less for disability insurance regardless of age, under a unisex law. This is not true. At higher ages women would pay more than they do now.

(b) Unfair discrimination against women indeed still exists under some forms of insurance. However, what remains of unfair discrimination is rapidly being eliminated. Disability income insurance is a major example. Women still usually pay more than they should for this insurance at all issue ages above about 45, but new cost tables now being developed will accelerate correction of this inequity. That is, unless tragic enactment of either of these bills halts the progress now underway by permitting insurers simply to disregard fairness in relation to different costs by sex and escape under the umbrella of "blended" unisex tables. "Fairness" to women could then no longer even be measured!

(3) Assessment of the impact of a unisex law on the shift in the relative amounts that each sex would pay in the aggregate for all kinds of insurance is the basic question. In the individual voluntary insurance marketplace, men and women do not buy insurance in the "aggregate" or as a "class". They buy insurance as individuals. It is utterly ridiculous to argue that it is quite OK for "women" to pay more for life insurance because "women" would also pay correspondingly less for annuities. Surely it will be small comfort to Mary Smith, a young career woman in Chicago who needs life insurance, to be assured that she should not be concerned at having to pay substantially more for the life insurance she needs, because Mary Jones, about to retire in Detroit, will pay correspondingly less for her individual retirement annuity. Yet this is exactly the kind of silly argument we hear in justification of the argument that unisex rates will be "fair" for both "men" and "women". DO the "unisex" advocates want "men" and "women" to be viewed only as faceless mass classes, or as the individuals that each one in fact is?

Let us get down to the relevant specifics, instead of indulging in meaningless and misleading aggregate mass cost shift estimates and comparisons.

(1) The average price of all kinds of individual insurance for which rates now differ substantially by sex will increase if S. 372 or H.R. 100 becomes law. Why? 2 reasons. First, all insurers will be forced to create "blended" cost tables, assuming some percentage "mix" of each sex. To avoid loss and protect the risk margins necessary to insure financial solvency, insurers will have to make conservative assumptions as to the initial "mix" and as to expected trends in that "mix".

Take life insurance as an example. Suppose some given insurance company "A" now has life insurance in force on men and on women in the proportions of 75 percent and 25 percent, respectively. It might then very reasonably assume that in constructing its new "blended" mortality tables and "blended" premium rates, as required by the new Federal law, it had better assume 80 percent male vs. 20 percent

female. After all, with the resulting unisex price to women increasing, while the price to men decreases, Company A may well discover that more men and fewer women will buy its product, under the artificial price changes dictated by the law.

In all probability however, because of the rapidly increasing need of today's working women for life insurance, the proportion of women buying life insurance will continue to increase, in spite of the unfair higher price they are forced to accept under the law. Result: excess Profits for Company A! Its conservative "blending" assumptions turn out to be conservative indeed, and it realizes increased profits.

Let's look a bit further ahead. Company A learns after a few years, from its improving unisex mortality experience, that its original blended assumptions were indeed conservative. It probably will be unable to learn this sooner, from its policy records, because in all likelihood, upon passage of a Federal unisex law, one state after another will promptly enact legislation or regulations prohibiting insurers from asking the sex of applicants. So Company A will simply have to learn, over time, that its mortality experience is improving.

The Company, wishing to remain competitive, comes out with new lower assumptions and lower premium rates. Let's say these now happen to be equivalent to 70 percent male mortality and 30 percent female mortality. But the proportion of women buying life insurance goes on increasing, as before. Result: still more excess profits for Company A! This cycle would go on for years, until eventually, perhaps some time in the next century, the distribution by sex stabilizes and Company A finds its mortality experience leveling out. But how the price of its stock has gone up over all those favorable years!

Note that this favorable trend for Company A was created quite artificially as a direct result of the Federal law. If only Congress had not seen fit to interfere in the free individual insurance marketplace, arbitrarily and artificially restricting the freedom of insurers to classify risks in reasonable relation to significant differences in costs, this whole scenario could never have happened. Company A, as well as every other life insurance company, would have had to compete directly for the business of women buyers, as well as men, at realistic prices appropriately based on the mortality rates separately experienced by each sex.

It is almost always unwise for Government to interfere arbitrarily and artificially with free markets, particularly when the presumed "social" objective is so obscure as in this instance!

This "blending" process is one reason why the average price of insurance will increase. What is the other? It is the cost of underwriting, referred to before. Under "no class" underwriting, as I've discussed, the selection of risks by insurers becomes an extremely expensive process. Under artificial restriction of risk classification, particularly with respect to one so important to the cost of sex, underwriting becomes more expensive. With impaired ability to rely on risk classification factors, insurers will have to give more careful and thorough attention to the selection and underwriting of individual applicants; that is, spend more on underwriting. This cost, like all other costs of doing business, has to be added to the price the public pays.

(2) Different problems affect different kinds of insurance, and unisex rates will lead to different outcomes. This principle, which I will discuss in relation to several specific types of insurance, is one of the major reasons why most of the mass aggregate cost shift estimates are misleading and will prove faulty. I have already illustrated the kind of scenario that is likely to occur in life insurance. So, while we are discussing mortality, let me turn to the individual annuity market.

(a) The effect on individually purchased life annuities and pension plans. Most individuals approaching retirement do not have the same degree of need for life annuities that younger persons have for life insurance. The guarantee inherent in a life annuity or insured pension is an important one: namely, that the guaranteed monthly checks will last as long as the annuitant does. But many individuals are able to budget and manage their financial assets well enough that they can retire on those assets without spending them on the purchase of an insured pension or life annuity. Many, in fact, already prefer to do that, because they believe, rightly or wrongly, they can realize a better investment return through some other medium, even if the total process entails more risk, being uninsured.

Under unisex life annuity rates, insured annuities would initially represent an exceptionally good investment for women, but an exceptionally poor investment for men. So much so, in fact, that to the extent I may be called upon to give professional actuarial advice to my various "consumer" clients, I may well feel professionally compelled to advise men not to buy life annuities, on the ground they will simply represent too poor an investment for men.

As more and more men realize what a poor investment "unisex" annuities really are for their sex, it must be expected that fewer and fewer men will be financially foolish enough to buy them. Potential result: individual life annuities and insured pensions would become more and more a purely "female" product. To the extent this quite probable trend approached its ultimate result, and insured annuitants became largely women, the price of such annuities would revert largely back to the female price, even if the price is technically "unisex".

Should this occur, women would not realize the price advantage that many unisex advocates are seeking, as to annuities and pensions. On the other hand, men, to the extent they abandon individual annuities and insured pensions as a retirement income vehicle, will have lost the safety of such insured retirement income media.

Hence, women may well find they have gained very little through legislated unisex annuity prices, while men would have lost the safety inherent in insured plans. Women gaining little. Men losing substantially. Does that sound like very useful or sensible "social policy"?

(b) Medicare Supplemental Insurance. It is indeed interesting that the insurance industry has, to a large extent, always priced Medicare Supplemental policies on a unisex basis, voluntarily. Interesting, since sex differentiated prices would have heavily favored women. At the senior ages involved, women experience 30 percent to 35 percent lower costs than men. With sex distinct rating, women in general would be paying on the order of 15 percent lower premiums; men, of course, higher premiums: perhaps 20 percent higher.

Whatever the reasons may be for the prevalence of unisex rates under Medicare Supplemental insurance, I think it is fair to say that the insurance industry has always been quick to react in areas where women experience higher costs, by charging women higher rates (e.g., individual annuities, for which women have long been charged higher prices). The industry has also been slow to act in areas where women experience lower costs, charging them lower rates. E.g., life insurance, where the first grudging concession to lower female mortality was probably the "3 year age set-back" under which a woman was charged the lower rate for men 3 years younger.

Only now, are we reaching the point where complete fairness to women is close to realization, through development of entirely separate female mortality tables, in place of generally cautious and conservative "age set-backs". Complete fairness to women, however, may well never occur, because enactment of unisex legislation would simply halt the progress. No separate female mortality tables at all. Only blended unisex tables, forever locking in unfairness to women. "Social" policy? For what valid purpose?

But, excuse me. I was discussing Medicare Supplement insurance. Probably 25,000,000 or more American senior citizens are now paying for Medicare Supplement insurance, at an average annual price of somewhere around \$500 per individual. About 13 to 14,000,000 of these senior citizens (well over half, since women live longer) would be women. Since these women are paying about 15 percent too much, the total annual overpayment being made by all women combined must then be at least: $13,000,000 \times \$500 \times 15\%$, or \$975,000,000.

This is an excess charge that many senior women, on limited fixed incomes, can ill afford. It amounts to \$75 per year per woman now paying for such insurance.

This tidy annual sum of nearly a billion dollars has never, to my knowledge, been taken into account in any of the mass aggregate cost shift estimates prepared in connection with S372 or HR-100, for the simple reason that Medicare Supplement insurance is already largely unisex and hence would not be affected by such laws. Unisex laws would merely perpetuate this massive inequity.

Should the Congress perhaps consider a bill mandating classification by sex, rather than prohibiting it?

(c) Disability income insurance. As mentioned before, Disability Income Insurance is an area where fairness to women has yet to be fully attained. Under most plans now on the market, women above about age 45 are overcharged. By age 60, they should be paying no more than 70 to 80 percent as much as men, but in the rate manuals of too many companies the female age 60 rate is still as high as 90 to 98 percent of the corresponding male rate.

This unfortunate situation, however, is in the process of getting corrected. More than 10 years ago, in 1971, the Society of Actuaries published in its professional journal (*The Transactions*) a paper of my own authorship that, for the first time ever, contained separate female disability tables. Publication of that paper helped, and more companies began to give more realistic consideration to female disability costs by age.

I have now completed a new paper, containing new updated male and female disability tables, which the Society of Actuaries will be publishing around the end of April, 1983.¹ Further, the Society also has a special committee now working on new disability tables to be recommended to the National Association of Insurance Commissioners as a new minimum valuation standard for policy and claim reserves under disability insurance, and this committee is expected to recommend entirely separate male and female tables. These new valuation tables would replace the obsolete regulatory standard now in use: the old 1964 Commissioners' Disability Table which is essentially a male table and which has unfavorable consequences when used to value reserves on female policies.

Publication of these new sex-distinct tables will accelerate the elimination of unfair discrimination against women in the pricing of individual disability income insurance: that is, unless enactment of S372 or HR-100, or similar unisex legislation, simply halts this progress right in its tracks, to the permanent detriment of women. Again, the mass aggregate cost shift estimates that have been prepared deal with the existing unfair situation, as to prices of disability income policies. They do not so far as I am aware, make any adjustment to account for the fact that at present women still pay too much for individual disability income insurance.

Unisex legislation would merely perpetuate the unfairness and abort the rapid progress now being made. "Social policy"? For what valid purpose?

Other similar examples can be cited, such as Major Medical insurance, where, again, a paper of my authorship published by the Society of Actuaries back in 1961 was the first to provide female tables showing that above age 55 or so women should be expected to have lower costs than men. In any case, I hope I've mentioned enough to demonstrate why S372 or HR-100 will certainly not help women, whatever else it may be that these bills are presumably supposed to accomplish.

(3) Enactment of a unisex insurance pricing law may halt continued gathering and dissemination of useful public knowledge concerning the mortality and morbidity of men and women. Enactment of S. 372 or HR-100 may lead many states to prohibit insurers from even asking the sex of the applicant in insurance application forms. Even if the states themselves should not so act, some insurers would discontinue asking anyway, either because it would be unusable information, or in fear of legal actions, charging them with "discriminatory intent". In any case, little insurance use could any longer be made of mortality or morbidity statistics specifically in relation to sex.

True, other entities would continue to gather and publish mortality and morbidity data by sex, such as the U.S. Public Health Service. But that involves direct additional expense, while the insurance industry now generates much valuable information as a by-product, valuable to the public. What a shame, to lose it all to fulfill someone's notions of desirable "social policy"!

Does not the public benefit from information such as the famous "Height and Weight Tables" published by the Metropolitan Life Insurance Company? Since "height and weight" associated with maximum longevity differs by sex (men and women are a lot different), "unisex" height and weight tables would be worth little. They might even cause positive harm by encouraging weight-conscious men and women to strive for the wrong weight!

It reminds me of the government researcher who found that the ideal weight for melons, for best flavor and nutritional value, is 8 pounds. Should we then all be looking for 8 pound cantaloupe and 8 pound watermelons at the grocery? Probably not.

Or the actuary who went hiking in the Idaho wilderness, equipped with detailed data on the local rivers. He came to a river, checked his data, and proceeded to wade across. Of course he drowned. His information was that the average depth of the water was 3 feet. That was the average depth, but out in the middle the water was 15 feet deep.

Unisex insurance pricing legislation makes just that kind of sense.

STATEMENT OF REV. EDWARD M. BRYCE ON BEHALF OF THE COMMITTEE FOR PRO-LIFE ACTIVITIES OF THE NATIONAL CONFERENCE OF CATHOLIC BISHOPS

As introduced, the "Fair Insurance Practices Act" (S. 372/H.R. 100) could have the disastrous effect of requiring abortion coverage in every health and disability policy offered by insurance providers in the United States. In order to understand

¹ As of mid-May, 1983 this new paper has now been distributed, in pre-print form, to all members of the Society of Actuaries.

this situation, one must know something about the debate in the 95th Congress over a similar bill, known as the "Pregnancy Disability Act" (also referred to as the "Pregnancy Discrimination Act").

When the Pregnancy Disability Act was proposed, the U.S. Catholic Conference expressed general support for the stated purpose of this legislation. The goal of eliminating sex discrimination from employee benefits was certainly laudable; and by promoting more complete health insurance coverage for pregnancy care, the bill offered an incentive to carry pregnancies to term for women who might otherwise have considered abortion. But the proposed legislation, introduced as S. 995 and H.R. 3075, was seriously defective because its definition of "medical conditions" related to pregnancy was interpreted to encompass elective abortion. Employers who recognized abortion, not as medical care, but as a destructive attack on one of the patients to whom obstetrical care should be directed, would therefore be forced to pay for abortions through their employees' insurance plans. Protests from the U.S.C.C. and elsewhere prompted the House of Representatives to approve an amendment which excluded most abortions from the definition of pregnancy care, but this was defeated in conference with the Senate. The approach ultimately accepted by Congress was to continue to include abortion as an integral part of pregnancy care, while allowing limited protection for the consciences of employers who had religious or ethical objections to elective abortion. As enacted (P.L. 95-555, 42 U.S.C. 200e(k)), this legislation was deficient in three respects:

(1) By allowing abortion to be classed among ordinary medical procedures, it ignored the realities of abortion and contradicted Congress's policy (expressed, for example, through the Hyde amendment to HHS appropriation bills) of generally encouraging childbirth over abortion through its funding power;

(2) "Conscience" protection extended only to the abortion procedure itself, so that employers would still be forced to pay for "sick leave" taken for the sole purpose of obtaining an elective abortion;

(3) Because of a "life of the mother" exception in the "conscience" clause, employers conscientiously opposed to all direct abortions would be forced to pay for procedures which violate their ethical standards.

(It should be noted that the practical scope of (3) is uncertain in the extreme. In *Doe v. Bolton*, 410 U.S. 179, 192 (1973), the U.S. Supreme Court interpreted abortions performed for the mother's "health" to include those performed to promote her social or emotional "well-being"; without statutory or regulatory clarification, "life" could also be interpreted quite broadly. There may, in fact, be no such thing as an "abortion necessary to save the mother's life" in modern medicine, because morally acceptable alternative therapies exist for all conditions for which abortion might be considered. Yet there is evidence to suggest that some insurance companies instructed to reimburse only for "life-saving" abortions under the Pregnancy Disability Act are simply reimbursing all abortion claims submitted to them, because they have no federal standard to guide them in distinguishing between claims which they are legally required to accept and those which they may reject.)

Because the U.S. Catholic Conference is an employer, and countless other Catholic organizations are in a similar position, the enactment of the Pregnancy Disability Act in 1978 confronted Catholic institutions with the intolerable dilemma of sacrificing their employees' interests or of violating their moral principles. For this reason, the National Conference of Catholic Bishops and the U.S.C.C. brought an action in federal district court to have the relevant section of P.L. 95-555 declared unconstitutional as an infringement of the First Amendment right to free exercise of religion. The district court dismissed this suit on the ground that no case or controversy had arisen: that is, the federal government had not attempted to enforce compliance by the U.S.C.C. because of its absolute refusal to include abortion in its employees' benefits, and no employee had sought relief in the courts after being denied such benefits. This dismissal was upheld on appeal (*National Conference of Catholic Bishops v. Bell*, 490 F.Supp. 734 (D.D.C. 1980), *aff'd sub nom. National Conference of Catholic Bishops v. Smith*, 653 F.2d 535 (D.C. Cir. 1981)). No other action attempting to challenge the P.D.A. on these grounds has been reported. A cloud therefore exists at present over the constitutionality of the Pregnancy Disability Act. The substantive issue will be joined squarely at whatever time enforcement of this law is sought in violation of the ethical principles of some person or organization.

With this background, it is not difficult to understand why we have serious objections to the "Fair Insurance Practices Act" (S. 372/H.R. 100) as presently worded, since an identical proposal was described in the last Congress as "simply extending these benefits [i.e., those mandated by the Pregnancy Disability Act] to those buying insurance on a private or individual basis" ("Fair Insurance Practices Act", S. Rep. No. 97-671, 97th Cong., 2d Sess. (1982)). Indeed, the pending legislation does not

even contain the inadequate "conscience" protection provided in the P.D.A. itself, and so contains no express limits of any kind on the mandatory incorporation of elective abortion coverage into all health and disability insurance plans in the United States.

As drafted, the proposed Fair Insurance Practices Act is susceptible to a construction which would require insurance companies to include coverage for abortion in all of their health and disability insurance policies. Section 4(a) makes it "unlawful discriminatory action" for "any insurer, because of * * * sex * * * to treat [an] applicant or insured differently than the insurer treats or would treat any other applicant or insured with respect to the terms, conditions, benefits or requirements of [an] insurance contract." The word "sex" is defined in Section 3, subdivision (8), to include "pregnancy, childbirth, or related medical conditions of a female insured." The term "related medical conditions" in this context is apparently intended to include abortion, if this clause is to be construed in accordance with the same language in the Pregnancy Disability Act. The combined effect of these provisions would therefore be that an insurer may not exclude abortion coverage from any health or disability insurance contracts, because otherwise it would be treating its insureds "differently" because of "sex" in violation of the Act.

The result of such a construction of S. 372/H.R. 100 is tantamount to the mandating of abortion coverage in all health and disability insurance policies issued by all insurance companies.

The qualification contained in Section 3's definition of "sex" that nothing in the Act shall be deemed to amend the Pregnancy Disability Act, which contains a limited conscience clause provision to protect employers, provides little comfort. If employers who object to providing abortion coverage are unable to obtain group health or disability insurance which excludes such coverage from insurance carriers, they will have little, if any, opportunity to exercise freely their religious or ethical convictions concerning abortion, unless they decide to forfeit the health and economic interests of their employees.

Private individuals who object on religious or ethical grounds to carrying health or disability insurance which includes abortion coverage are presented with the same "Hobson's choice." It provides little comfort to them to know that they need not avail themselves of such coverage, and it constitutes an outright violation of the consciences of such individuals who are required to provide health or disability insurance for others, such as dependents. Nor does this bill make adequate provision for the consciences of insurance providers themselves, some of whom have religious and ethical objections to providing abortion coverage as though abortion were an integral part of good medical practice.

Construed in this fashion, this bill would also invalidate laws enacted in various states regulating the provision of insurance coverage for abortion. The state of Idaho, for example, recently enacted a law requiring that policies of disability insurance issued in that state shall not provide coverage for elective abortions (defined as abortions performed for reasons other than the preservation of the mother's life) except by an optional rider for which there must be an additional premium. Laws of this kind help to insure that desired coverage will be available for every citizen, and that those who have conscientious objections to abortion will not be forced to pay for elective abortions desired by other insured parties. This even-handed approach, already adopted by several states, would almost certainly conflict with, and thereby be superseded by, the proposed Fair Insurance Practices Act.

Finally, consideration must be given to the contradictions between this bill and well-established Congressional policy against federal support for abortion (as expressed, for instance, in the Medicaid program). This policy was declared constitutionally valid by the U.S. Supreme Court in 1980, when it explicitly affirmed a "legitimate governmental objective of protecting potential life." The Court ruled that it is not "irrational" that "Congress has authorized federal reimbursement for medically necessary services generally, but not for certain medically necessary abortions"; in fact, "abortion is inherently different from other medical procedures, because no other procedure involves the purposeful termination of a potential life" (*Harris v. McRae*, 448 U.S. 297, 325 (1980)). The Supreme Court recognized that funding restrictions on abortion do not constitute discrimination directed against women—rather, they are directed against abortion as a destructive procedure. This recognition is totally absent from the proposed Fair Insurance Practices Act as presently worded; its policy on abortion therefore contradicts current abortion funding policy, and goes far beyond what is required by the Supreme Court's discovery of a fundamental "right" of abortion.

These deficiencies, we believe, can be corrected by clarifying amendments in such a way as to make this bill "neutral" on the subject of abortion. For example, a

clause can be added to explain that nothing in the act should be construed to require any insurer to include abortion in any of its policies. Such language, of course, would not in any way restrict abortion or insurance coverage for abortion; it would simply mean that the inclusion of abortion would not be required in health or disability insurance plans. At the very least, explicit protection should be provided for those who conscientiously object to abortions in all circumstances. Again, this would in no way preclude insurers or insured parties from contracting for any coverage desired, but would respect the ethical principles of those who object to abortion. This approach would therefore parallel the complete protection for conscience which federal law currently provides for health care professionals who do not wish to perform or participate in any abortions whatsoever (See P.L. 96-76, 42 U.S.C. 300a-7).

Neither of these steps should be controversial, for they simply follow well-established federal policies already in force and protect American citizens from coercion toward involvement in abortion. If no such protections were to be included in the legislation, we would feel compelled to ask Congress to reject the entire bill in defense of the First Amendment. Thank you for your consideration.

STATEMENT OF JON HARKAVY, DIRECTOR, GOVERNMENTAL AFFAIRS, RISK AND INSURANCE MANAGEMENT SOCIETY, INC.

This testimony in opposition to S. 372 is submitted on behalf of the Risk and Insurance Management Society, Inc., commonly known as RIMS. RIMS is a non-profit organization representing corporate and governmental consumers of insurance with a membership comprised of more than 3800 corporations, institutions and governmental bodies in 73 chapters located throughout the United States and Canada. Corporate members include 90 percent of the Top Fortune 1300 companies, and are responsible for the purchase of over \$30 billion worth of insurance services.

Our testimony in opposition to S. 372 will focus on the overwhelming fiscal burden that this legislation will place on many RIMS members in the pension field. We take no position, at this time, as to the wisdom of a public policy prohibiting gender based risk classification. It is most appropriate to point out, however, that when federal courts have had to devise remedies for cases of sex discrimination in pension programs, the solutions have always reflected a concern for the financial impact of any solution on the reserves of the retirement system and the funding entity. The courts have realized that they cannot ignore the cost which changes in the rules affecting insurance plans may have on the economy. RIMS most respectfully submits that this same concern is not reflected in S. 372.

Not only does S. 372 prospectively shift costs between both sexes; it also imposes billions of dollars in costs on corporate and public pension plans, employers, and insureds on contracts already in effect. Most plans are provided through employer sponsorship. The provisions of ERISA, the terms of the collective bargaining agreements, and Section 4(c)(2) of S. 372, makes it most likely that plans would have to comply with S. 372 by "topping up" the lower benefit in circumstances where benefits are not currently gender neutral. Ironically, in defined benefit plans with sex differentiated options and early retirement factors, S. 372 would require increased payments to men retiring early or electing optional benefits. This windfall to men pension participants would not be limited to rare or isolated instances. Mayor Koch has testified that of the \$862 million topping off expense incurred by the City of New York pension system, nearly three fourths or \$629 million would be paid to men topping off to higher female benefit levels.

Regardless of whom may benefit from S. 372, the key issue which the Committee must face is the cost and impact of this regulation on existing pension plans. An initial consideration must be implementation costs. We concur with the American Academy of Actuaries' judgment that the 90 day implementation period called for by the bill is not possible at any cost. Even if S. 372 is amended to lengthen this compliance period, the implementation cost according to the Academy will be approximately \$1.3 billion. This figure, of course, reflects only the initial implementation cost, not the overall cost of compliance. The annual increased cost of S. 372 to pension plans, public and private, has been estimated by the Academy at \$2.5 billion a year. Other estimates by the U.S. Department of Labor range up to about the \$1.7 billion a year, up from their earlier estimate of \$1 billion. Moreover, if the history of past insurance cost projections are any guide, all current estimates will prove low. The federal government's own experiences under Social Security, Medicare, Medicaid, and other insurance related legislation should be sufficient warning that cost projections for any social insurance coverage have always been grossly low,

particularly in calculating the factor of induced costs such as the type mandated by S. 372.

With respect to public pension systems, many fiscally hard pressed states and localities will be unable to afford the liabilities imposed by S. 372. In New York State alone, where such added unfunded liabilities would be \$2 billion for just the New York State and City teachers' and employees' retirement systems, the Superintendent of Insurance has already advised that eliminating sex based actuarial consideration could "bankrupt the state and its political subdivisions".

In the area of private pensions, the impact will be no less draconian. Many corporations already in a weakened state from the recession, will not be able to fund the obligations imposed by S. 372. Those insureds whose financial position will permit such an outlay, may be able to do so only by employment layoffs, and a serious inhibition of their ability to compete effectively with foreign corporations, who will not have to expend a significant portion of their working capital to fund these newly required pension obligations. Moreover, the Financial Accounting Standards Board has proposed a change in financial reporting requirements, under which pension plan liabilities will have to be carried on the profit and loss statement of the parent employer. Should the FASB requirement take effect, additional corporations may become insolvent and, a greater number will suffer significant loss of stock value under S. 372.

In addition, the protection afforded to the individual pension plan participant, should their plans be rendered insolvent, is very much in doubt. Most vulnerable, of course, will be those individuals in plans not covered by the Pension Benefits Guarantee Corporation (PBGC). Even in those pension plans covered by the PBGC, the adequacy of the PBGC's reserves to make good on its responsibilities if S. 372 becomes law, is by no means assured. It is not inconceivable that the federal government will need to increase the tax on employers to prop up PBGC against these obligations imposed by the bill.

In conclusion, S. 372 will undermine not only the viability of many pension systems, but also the funding entities themselves, be they governmental or in the private sector. Furthermore, the security of the pension plan beneficiaries may be jeopardized. RIMS respectfully urges Senate Commerce Committee members to reject S. 372 in its present form.

A REPORT BY THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK CONCERNING THE CONSTITUTIONALITY OF RETROACTIVE FEATURES OF PROPOSED FEDERAL INSURANCE PRACTICES LEGISLATION

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

A preliminary analysis of the apparent application of S. 372 to insurance contracts existing before the Act's effective date in light of the "due process clause" of the Fifth Amendment and the "contract clause" of Article I, Section 10, Clause 1, indicates that certain provisions of S. 372 may have serious constitutional infirmities.*

The Committee recommends that the Congress give greater attention to studying carefully the retroactive provisions of the S. 372, the necessity, if any, for them and their effects on insured persons, employers, insurers, state and local governments and others. We respectfully suggest that the Congress consider amending the S. 372 to avoid the potential constitutional infirmities discussed herein.

Among other alternatives, the Committee recommends that the Congress consider deleting all retroactive provisions from the Acts, making them applicable only to insurance contracts entered into on or after the effective date.

I. INTRODUCTION

It has long been the practice of the insurance industry to use sex-distinct actuarial tables in the computation of life and health insurance premium rates and annuity pay-in and pay-out rates and to use gender-based classifications in determining automobile insurance premium rates.

Based on gender classification, otherwise similarly situated females pay more for annuity benefits than males, less for life insurance, more for health insurance and less for automobile insurance. An example of actual premium and annuity payment

*This Report was prepared by the Committee on Insurance Law and was accepted by and is presented on behalf of the Association of the Bar of the City of New York.

amounts help to put this into focus: a sixty-five year old female receives \$8.16 of monthly income per \$1,000 of consideration, while a male, at sixty-five, receives \$8.90;¹ thus, F's income is about 8½ percent less than M's; a thirty-five year old male pays \$14.31 annual premium for whole life insurance, while a female at the same age pays \$12.60;² F's premium is about 12 percent less than M's.

To date, the practice of using sex-distinct actuarial tables in the computation of rates has not been found violative of the insurance law in any state.³ In fact, at least one jurisdiction mandates use of sex distinct tables.⁴

Recently, two bills, H.R. 100, the Nondiscrimination in Insurance Act, and S. 372, the Fair Insurance Practices Act, have been introduced in Congress. If passed "the Acts"⁵ would alter the insurance industry's use of gender based classification.

II. RETROACTIVE APPLICATION OF THE ACTS

The stated purpose of the Acts is to prohibit discrimination in insurance and annuities on the basis of race, color, sex or national origin with respect to access, availability of coverage, terms, conditions, rates, benefits and requirements and in the methods of determining them.⁶ The Acts declare as unlawfully discriminatory the following actions, if made on the basis of the sex of a person who applies for insurance⁷ or becomes insured under a contract of insurance made after the Acts' effective date:

(1) To refuse to make, or to refuse to negotiate, or otherwise make unavailable or deny, or delay receiving and processing an application for, a contract of insurance of the type ordinarily made by such insurer; or⁸

(2) To treat such applicant or insured differently than the insurer treats or would treat any other applicant or insured with respect to the terms, conditions, rates, benefits, or requirements of such insurance contract.⁹

As these provisions of the Acts apparently do not have retroactive application, they are not at issue in this Report. Rather, the provisions of the Acts¹⁰ which apparently have retroactive application raise, in our opinion, serious constitutional questions that are addressed herein.

For several reasons, the analysis of these constitutional questions is preliminary:

(1) The operative provisions of the Acts themselves are ambiguous;

(2) The consequent effects of these provisions on insureds, employers, insurers, state and local governments and others are not fully known; and

(3) Since Congress has not completed its hearing on the Acts the need for various provisions, particularly those having retroactive application, is not established in the record.

Nonetheless, the Committee offers this Report in the belief that enough is known to sound an early bell, not necessarily tolling the Acts' unconstitutionality, but warning that they are in dangerous waters.

Subdivision 4(c)(1), (2) of each of the Acts appears to effect insurance contracts made prior to the Acts' effective date. This subdivision is set out in full:

(c) With respect to all contracts of insurance existing on the date this Act becomes effective—

(1) It shall be an unlawful discriminatory action for any insurer after the effective date of this Act—

¹ These rates are based on the April, 1980 edition of a major life insurance company's currently payable rates.

² These rates are based on July, 1982 premiums, Non-smoker class for a Whole Life Plan of insurance offered by the same life insurance company.

³ The current controversy in the employee benefit plan area concerns whether an employer's practice in utilizing an insurer's products which are based on sex distinct tables is violative of Title VII of the Civil Rights Act of 1964. See, e.g., *Norris v. Arizona Governing Committee*, 486 F.Supp. 645 (D. Ariz. 1980), aff'd, 671 F.2d 330 (9th Cir. 1982), cert. granted, 103 S.Ct. 205 (1982). It should be noted that on Apr. 19, 1983, Montana enacted House Bill No. 358 which makes it unlawful to discriminate on the basis of sex in insurance and pensions. The new law has a delayed effective date and is not retroactive. The statute provides in part: "This Act does not apply to any insurance policy, plan, coverage or any pension or retirement plan, program, or coverage in effect prior to Oct. 1, 1985."

⁴ West's Annotated California Insurance Code, § 790.03(f).

⁵ The substantive provisions of the two Acts are virtually identical.

⁶ This Report deals only with sex based distinctions in such products.

⁷ The Acts define annuities to include annuities.

⁸ Acts § 4(a)(1).

⁹ Acts § 4(a)(2). See also, Acts §§ 4(b)(1), (2) and (3).

¹⁰ Acts § 4(c)(1) and (2).

(A) To charge or collect premium payments or contributions which become due after the effective date of this Act; or

(B) To determine the amount of or to pay to any insured or other beneficiary under an insurance, annuity, or pension contract any periodic or lump-sum payment after the effective date of this Act;

If such charge, collection, determination, or payment, is based, directly or indirectly, either on race, color, religion, sex, or national origin of any person or group of persons, or on any statistical table whose use would, if applied to contracts made after the effective date of this Act, violate any provision of this section; and

(2) The insurer may modify the premium and contribution rates and may increase but not decrease the periodic and lump-sum payments under such existing contracts insofar as they are due after the effective date of this Act, if clearly necessary to comply with the nondiscrimination requirements of this Act (and if the State agency having jurisdiction to regulate the business of insurance concurs that the modification requested by the insurer is clearly necessary to comply with such requirements and authorizes such modification), but such insurer need not refund any portion of the premiums and contributions which were payable to the insurer prior to the effective date of this Act nor pay any additional amounts for the benefits which were payable by the insurer prior to the effective date of this Act.

This language reveals many ambiguities. The Acts employ, in juxtaposition, a number of terms and phrases which are not defined. These include "premium payments," "contributions," "periodic or lump sum payment," "premium and contribution rates," "refund," "payable," "benefits" and "clearly necessary."

Furthermore, Subdivision 4(c) itself is convoluted. It begins by apparently proscribing, after the effective date of the Acts, charging "premium payments or contributions" and determining any "periodic or lump sum payment" under preexisting contracts on the basis of sex. Subdivision 4(c) then provides that an insurer may modify "premium and contribution rates" and may increase (but not decrease) "periodic and lump sum payments" under such preexisting contracts, if the appropriate state insurance regulator (1) finds that such a modification is "clearly necessary" to comply with the nondiscrimination requirements of the Act and (2) authorizes the modification. It concludes with a clause which provides that an insurer need not "refund" any portion of "premiums and contributions" which were "payable" to it nor pay any additional amounts for the "benefits" which were "payable" by it prior to the effective date.

This concluding clause of Subdivision 4(c) may be construed as directly contrary to prior portions of the subdivision, which seem to proscribe sex-based "premium payments or contributions" and "periodic and lump sum payments" under preexisting contracts without insurance regulator approval.

III. ILLUSTRATIONS OF THE POSSIBLE APPLICATION OF RETROACTIVE PROVISIONS

Consider, for example, the effect of Subdivision 4(c) on a \$50,000 whole life insurance policy issued to a 35 year old woman in 1974 and in force on the effective date of the Acts. The annual level premium "payable" to the insurer of \$1,058.50 was based on sex-distinct mortality tables. Assume that the same policy issued in 1974 to a 35 year old man has an annual level premium of \$1,163.50, or about \$100 per year more than for the 35 year old woman.

It is unclear whether the operative provisions of the Acts would require the insurer to equalize the premiums because they were determined on the basis of sex or whether the concluding clause of subdivision 4 would save the premiums from modification since they were "payable" prior to the Acts' effective date.

If the Acts would require the insurer to modify the premiums on outstanding contracts, it apparently would have three alternatives: lower the M rate to the F level; raise the F rate to the M level; or lower the M rate somewhat and raise the F rate to that level.

If the insurer were required to lower the M rate to the F level under preexisting contracts pursuant to a Federal statute and state insurance department action, it is appropriate to consider whether the insurer has been deprived of due process of law or subjected to an impermissible impairment of contractual obligations. If the insurer raised F rates under preexisting contracts pursuant to a Federal statute and state regulatory action, it is appropriate to scrutinize whether the affected woman was denied constitutional guarantees of due process or equal protection.

Consider also the possible effect of the Acts on the "benefits" provided under the same outstanding \$50,000 whole life insurance policy given that the term "benefits" is not defined in the Acts and therefore might include any or all of the following: (1) the face amount of insurance payable on death; (2) any additional accidental death

benefit; (3) the cash amount payable on surrender of the policy as set forth in the policy; (4) a policy loan in an amount set forth in the policy; (5) dividends; (6) waiver of premiums in the event of disability.

Assuming, for example, that the Act's effective date is in 1983, the cash surrender value in 1984 for a then 45 year old woman who has been insured under a whole life insurance policy issued in 1974 and in force for ten years would be \$9,100; the cash surrender value for her male counterpart who has paid ten annual level premiums, each one slightly more than \$100 higher than the woman's would be \$10,000.

The Acts could be construed to require an insurer, on its effective date, to increase the F cash surrender amount to the M level, despite the fact that the insurer has collected over \$1,000 more in total premiums from M. Or the phrase in the concluding clause of Subdivision 4(c), could be interpreted to eliminate the need for an insurer to "pay any additional amounts for the benefits which were payable by the insurer prior to the effective date."

These results are only illustrative of other similarly unclear and contradictory possible results from application of the Acts to other insurance products. These results seemingly multiply the potential problems created by the ambiguity of the various provisions of the Acts, including their apparent retroactive effect.

Requiring individual insureds and group insureds (e.g., corporate employers or state and local governments) to pay higher premiums or make greater payments than preexisting contracts required or requiring insurers to pay additional benefits, collect less premiums or otherwise modify preexisting contracts, would be contrary to their economic interests. It is this possible economic effects to insureds and insurers alike arising from modifications of preexisting contracts which could be deemed to be required by the Acts that raise serious questions as to the constitutionality of their retroactive portions.

IV. DISCUSSION OF CONSTITUTIONALITY OF RETROACTIVE PROVISIONS

(A) Applicability of "Due Process Clause" and "Contract Clause"

The United States Constitution contains several provisions respecting the impairment of the obligation of contracts, due process of law, and equal protection which restrain the retroactive application of legislation.

The Fifth Amendment to the Constitution which clearly applies to Congressional enactments, provides, in part, "No person¹¹ shall . . . be deprived of life, liberty or property without due process of law. . . ."

Article I, § 10, cl. 1 of the Constitution provides that, "[n]o State shall . . . pass any . . . law impairing the obligation of contracts. . . ." This provision, the "contract clause," limits the powers of the states, not those of the Federal government.

However, it is relevant to the Acts' constitutionality in two ways: First, they allow premium and contribution rates in preexisting contracts to be modified, if authorized by the state regulatory authority.¹² In authorizing such retroactive contract modification, a state may promulgate a regulation or take other action which may be a "law" within the meaning of the "contract clause."¹³ Secondly, Federal legislation with retroactive effect may be challenged under the Fifth Amendment's "due process clause,"¹⁴ albeit not directly under the "contract clause." The Supreme Court has, however, used standards to test a retroactive federal statute under the "due process clause" which are similar to the standards used under the "contract clause."¹⁵ Thus, an analysis of the standards of the "contract clause" cases applied to the Acts is appropriate to determine if they are constitutionally defective.

¹¹ It is well established that with respect to property rights a private corporation is a "person" within the meaning of the due process clause. See, e.g., *Pierce v. Society of Sisters*, 268 U.S. 37 (1925).

¹² Acts § 4(c)(2).

¹³ *Appleby v. Delaney*, 271 U.S. 403 (1926); *Grand Trunk W. R. Co. v. Railroad Comm.*, 221 U.S. 400 (1911); *Mt. Pleasant v. Beckwith*, 100 U.S. 514 (1879).

¹⁴ This raises an interesting ancillary question: Whether Congress may authorize the States to make a law which would otherwise contravene the contract clause? The answer to this question is almost certainly "No". See, e.g., *Kener v. La Grange Mills*, 231 U.S. 215 (1913); *Gunn v. Barry*, 15 Wall. (U.S.) 610 (1872).

¹⁵ See, e.g., *Veix v. Sixth Ward Bldg. & Loan Assn.*, 310 U.S. 32 (1940); *Perry v. United States*, 294 U.S. 330 (1935); *Lynch v. United States*, 292 U.S. 571 (1934); *Sinking Fund Cases*, 99 U.S. 700 (1878). See also, *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 16 (1976) where the Court stated: "It does not follow, however, that what Congress can legislate prospectively it can legislate retrospectively. The retrospective aspects of legislation, as well as the prospective aspects, must meet the test of due process, and the justifications for the latter may not suffice for the former."

(B) *Effective of Recent Case Law Applying the Contract Clause on the Retroactive Provisions of the Acts*

It is difficult to fashion a hard and fast rule as to when legislation will be held to be unconstitutional because it impairs contractual obligations. Frequently, the inquiry has centered on whether the legislation abrogated "vested rights."¹⁶ This test does not seem very useful, however, because holding a right to be vested if it is so perfected that it cannot be taken away by statute¹⁷ is frequently conclusory, making the test virtually circular.

Since the landmark case of *Home Bldg. & Loan Assn. v. Blaisdell*, 290 U.S. 398 (1933), it is clear that the "contract clause" is not to be read literally.¹⁸ After *Blaisdell*, the Supreme Court sustained the retroactive application of a wide variety of economic and social laws which modified or abrogated contracts already in effect, on the theory that in the exercise of the states' police power the legislature had wide discretion.¹⁹

More recently, however, the Court has given indication of revitalizing the "contract clause."²⁰ In *United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977), the Court held that the "contract clause" prohibited retroactive repeal of a statutory covenant which restricted the New York/New Jersey Port Authority from subsidizing rail transportation with funds pledged as security for bonds it had issued.

While conceding the State's broad powers to adopt general regulatory measures, even if private contracts may be impaired as a result, the Court found that private contracts are not subject to unlimited modification under the police powers, and citing *Blaisdell*, stated, "(l)egislation adjusting the rights and responsibilities of contracting parties must be upon reasonable conditions and of a character appropriate to the public purpose justifying its adoption." 431 U.S. at 22.

The Court found the appeal to be unreasonable and therefore prohibited under the "contract clause" because (1) it was not necessary to achieve the State's plan, (2) a less drastic modification could have been effective and (3) the contract provision repealed did not have a substantially different impact at the time of the repeal than when it was adopted.

In *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978), reh. denied, 439 U.S. 886 (1978), the Court held that a Minnesota Act violated the "contract clause" by assessing a pension funding charge upon a termination pension plan established prior to the effective date of the Act.

The Court articulated the analysis applied in listing the unconstitutionality of a state law under the contract clause:

The severity of the impairment measures the height of the hurdle the state legislation must clear. Minimal alteration of contractual obligations may end the inquiry at its first stage. Severe impairment, on the other hand, will push the inquiry to a careful examination of the nature and purpose of the state legislation. *Id.* at 245.

The Court held that the act in question substantially impaired contractual obligations by compelling an employer to recalculate and fund full pension benefits for all

¹⁶ One commentator has concluded:

[T]here is at least a tendency for the contract clause and the due process clause to coalesce. Although there is no clause expressly forbidding the Federal Government to pass laws impairing the obligation of contracts any Federal law impairing them in a manner which the Supreme Court deemed unreasonable would doubtless be held to be a deprivation of property without due process. . . . And a State law which impaired obligations in a manner which the Court deemed reasonable would be held valid. Hale, *The Supreme Court and the Contract Clause*, 57 Harv. L. Rev. 852, 890 (1944).

¹⁷ See, generally, Hochman, *The Supreme Court and the Constitutionality of Retroactive Legislation*, 73 Harv. L. Rev. 692, 696 (1960).

¹⁸ It is important to note that the law was also challenged under the due process and equal protection clauses of the Fourteenth Amendment. In upholding the law under the due process challenge, the Court simply stated:

What has been said on that point [i.e., the contract clause analysis] is also applicable to the contention presented under the due process clause. 290 U.S. at 448 (bracketed material added).

¹⁹ See e.g., *El Paso v. Simmons*, 379 U.S. 497 (1965), reh. denied, 380 U.S. 926 (1965). But see, *W.B. Worthen Co. v. Thomas*, 292 U.S. 426 (1934); *W.B. Worthen Co. v. Kavanaugh*, 295 U.S. 56 (1935); *Treigle v. Acme Homestead Assn.*, 297 U.S. 189 (1936).

²⁰ The Court countered the argument that choosing among these alternatives is a matter of legislative discretion by holding:

But a State is not completely free to consider impairing the obligations of its own contracts on a par with other policy alternatives. Similarly, a State is not free to impose a drastic impairment when an evident and more moderate course would serve its purposes equally well. 431 U.S. at 30-31.

employees with ten or more years service on termination of a pension plan, regardless of the plan's terms. The Court also noted that:

(1) The employer had no reason to anticipate that pension rights could become vested, except in accordance with the terms of the plan; it relied heavily and reasonably on this legitimate and contractual expectation in calculating its annual contributions. *Id.* at 245-246.

(2) A basic term of the pension contract—on which the employer had personally relied on for ten years—was modified. *Id.* at 246.

(3) The new law changed the employer's obligations in an area where the element of reliance was vital—the funding of a pension plan.

The Court also found that the record did not present such a severe disruption of contract rights was necessary to meet an important general social problem. The Court noted as among the factors which influenced its holding²¹ that the legislation imposed sudden, totally unanticipated and substantial retroactive obligations and it was not a temporary alteration of contractual relationships but worked a severe, permanent and immediate change.

A careful reading of *Allied Structural Steel* discloses several indicators that the Acts, if interpreted to apply retroactively, may have serious constitutional infirmities.

The Court reviewed the significant factors present when the Court upheld state statutes against a "contract clause" or "due process" challenge. The factors included:

(1) The law was enacted to protect a basic societal interest;

(2) Relief was appropriately tailored to the need;

(3) The legislatively-imposed conditions were reasonable;

(4) The party claiming impairment of contract had not "purchased into an enterprise already regulated in the particular to which he now objects." 438 U.S. at 242-43 n. 13, quoting *Veix v. Smith Ward Building & Loan Assn.*, 310 U.S. 32, 38 (1940).

The Court's opinion evinced a particular concern for obligations under long-term contracts, like life insurance and annuities, when scrutinizing the constitutionality of retroactive legislation. In finding that the statute so substantially altered contractual obligations as to be unconstitutional, the Court cited its reasoning in *Los Angeles Department of Water & Power v. Manhart*, 435 U.S. 702, 721 (1978), wherein it stated:

These [pension] plans, like other forms of insurance, depend on the accumulation of large sums to cover contingencies. The amounts set aside are determined by a painstaking assessment of the insurer's likely liability. Risks that the insurer foresees will be included in the calculation of liability, and the rates or contributions charged will reflect that calculation. The occurrence of major unforeseen contingencies, however, jeopardizes the insurer's benefits. Drastic changes in the legal rules governing pension and insurance funds, like other unforeseen events, can have this effect.

This analysis might be applied to insurer, employer or state and local government reliance upon assessments of potential liability or premiums needed to meet such liability under contracts which would be altered by the Acts under review.

The Court also found that the lack of reliance by the employees covered by the pension plan was significant:

In some situations the element of reliance may cut both ways. Here, the company had relied upon the funding obligation of the pension plan for more than a decade. There was no showing of reliance to the contrary by its employees. Indeed, Minnesota did not act to protect any employee reliance interest demonstrated on the record. Instead, it compelled the employer to exceed bargained for expectations and nullified an express term of the pension plan. 438 U.S. at 246 n. 18.²²

²¹ But cf., *Nachman Corp. v. Pension Benefit Guar. Corp.*, 446 U.S. 359, n. 12 (1980), *reh. denied*, 448 U.S. 908 (1980) (containing an analysis of the record supporting the enactment of the Employee Retirement Income Security Act of 1974).

²² See also, *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 17, n. 16 (1976) where the Court had this to say on the reliance issue:

"Whether or not a person who could have anticipated the potential liability attaching to his chosen course of conduct would have avoided the liability by altering his conduct has been significant in at least one line of cases in this Court. In *Welch v. Henry*, 305 U.S. 134 (1938), the Court upheld against a due process attack a state statute enacted in 1935 taxing 1933 dividend income that the 1933 taxing statute had explicitly exempted. Adopting the view that a stockholder would have continued to receive corporate dividends even if he knew that the dividends would subsequently be taxed, the Court distinguished prior cases invalidating the retroactive taxation of gifts on the ground that the donor might have refrained from making the gift had he anticipated the tax. *Id.*, at 147-148. But see *Carpenter v. Wabash R. Co.*, 309 U.S. 23 (1940); *Louisville & Nashville R. Co. v. Mottley*, 219 U.S. 467 (1911)."

Likewise in the instant situation, it is highly unlikely that insureds relied upon receiving insurance coverage other than that spelled out by their insurance contracts.

In its most recent contract clause case, *Energy Reserves Group, Inc. v. The Kansas Power & Light Co.*, 51 U.S.L.W. 4106 (U.S. Jan. 24, 1983), the Court summarized earlier cases and outlined a five part test for weighing and balancing the constitutionality of a retroactive statute:

(1) The threshold inquiry is whether the law has in fact, operated as a substantially impaired contractual relationship.

(2) The level of scrutiny to which the legislation will be subjected increases as the severity of the impairment increases.

(3) In determining the extent of the impairment, past regulation of the industry that the complaining party has entered is considered.

(4) If the legislation constitutes a substantial impairment, the government, in justification, must have a significant and legitimate public purpose behind the regulation.

(5) If a significant and legitimate public purpose is identified, it is considered whether the adjustment of the rights and responsibilities of the contracting parties is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the regulation.

Application of the various elements of this test to the possible applications of the retroaction provision leads to the conclusion that they may have serious constitutional infirmities.

(1) If given full retroactive effect, the Acts would substantially impair contractual relationships. In a "worst case" situation, millions of preexisting contracts for life, health, automobile insurance and annuities would be substantially modified.

The costs of such modifications might fall on female insureds, male insureds, employers, insurers or state and local governments, depending upon the various possible ways in which the retroactive provision were applied to various types of insurance contracts. There is little doubt, however, that the many of the possible retroactive applications of the Acts would engender litigation and various potential litigants would be able to meet the threshold test of demonstrating a substantial impairment of contract.

(2) There is also little doubt that the Acts' effects would be so pervasive that the Court would subject the legislation to very close scrutiny.

(3) Presumably the element of "past regulation" would not apply if the adversely affected party were an insured, an employer or a governmental unit, since none of these persons "entered" regulated industry.

If an insurer were the adversely affected party, given the past history of insurance regulation, the test would presumably apply but how is not clear.

When discussing this test in prior cases, the Court has used broad language referring to entering a "heavily regulated industry,"²³ Clearly, insurance is, in general, a "heavily regulated industry." But the industry has never before been regulated in the way the Acts purport to regulate it since all states have permitted use of gender-based classification, except the one state which has mandated it.²⁴

By referring to "entering" into a regulated industry, the Court seems to imply that the affected party could not have relied upon his freedom to contract in a way which was contrary to the regulatory scheme at the time of entry. But here insurers "entered" an industry which permitted, and in one case required them to contract precisely as they did. Litigation brought by affected insurers under the Acts would require the Court to refine the "regulated industry" test and apply it to circumstances which the Court has not before faced.

(4) The fourth element of the analysis would require the government to come forward with a significant and legitimate public purpose for the retroactivity of the legislation. Whether there is such a purpose now appears to be an open question.

(5) Finally, even if a significant and legitimate public purpose is found, the Court will analyze whether the modification of contract rights and responsibilities is based upon reasonable conditions and is of a character appropriate to the public purpose.

Whether the Acts meet this test will depend to a great extent upon the ways in which they are applied. At this early state, this too must be deemed an open question. As noted above, however, it is possible to hypothesize myriad and conflicting applications of the Acts which might be extremely onerous and unreasonable in light of the putative purpose of the Acts.

²³ 51 U.S.L.W. at 4109. See also, *Allied Structural Steel Co. v. Spannaus*, 438 U.S. at 242, n. 13 (1978), citing, *Veix v. Sixth Ward Bldg. & Loan Assn.*, 310 U.S. 32, 38 (1940).

²⁴ See notes 3 and 4, *supra* and accompanying text.

For all of these reasons, the Acts under review may have substantial constitutional infirmities which most likely will come to light under a "due process" analysis, employing standards the same or similar to those employed in "contract clause" cases.²⁵

(B) *Effect of Recent Case Law Indemnifying Due Process and Equal Protection Rights to the Act Retroaction Provision*

Since the Supreme Court has held that Fourteenth Amendment equal protection guarantees are contained in the Fifth Amendment's "due process" clause, it is appropriate that the Acts also be scrutinized for a possible denial of these rights.²⁶

As noted previously, the Acts might permit an insurer with the concurrence of the state regulator to modify premium and contribution rates under existing contracts. Such action would entail a Federal law permitting a preexisting private contract to be modified on the basis of the sex of the other party by virtue of state action. Thus, an aggrieved female may claim federal and state action allowed an impermissible gender-based discrimination under the "equal protection clause" of the Fourteenth Amendment or the "due process clause" of the Fifth Amendment, or both.²⁷

In *Frontiero v. Richardson*, 411 U.S. 677 (1973), several Federal statutes were held violative of "due process" because, admittedly for administrative convenience, they assumed that spouses of males in uniformed services were dependents for purposes of obtaining certain benefits but required that spouses of females prove their dependency for over one-half of their support.

The Court departed from the traditional test²⁸ that a legislative classification would be sustained, unless it were arbitrary and bore no rational relationship to a legitimate governmental interest and looked at the sex-based classification in the same manner as classifications based upon race, alienage, or national origin, as being inherently suspect, and therefore subject to strict judicial scrutiny. *Id.* at 688. The Court, confirming its previous decision in *Reed v. Reed*, 404 U.S. 71, 77 (1971) stated:

[A]ny statutory scheme which draws a sharp line between the sexes, solely for the purpose of achieving administrative convenience, necessarily commands dissimilar treatment for men and women who are . . . similarly situated and therefore involves the very kind of arbitrary legislative choice forbidden by the [Constitution] . . . 411 U.S. at 690.

In *Craig v. Boren*, 429 U.S. 190 (1976), reh. denied, 429 U.S. 1124 (.977), two sections of an Oklahoma statute that prohibited the sale of "non-intoxicating" 3.2 percent beer to males under the age of 21 and to females under the age of 18 were held to violate the Fourteenth Amendment's equal protection clause.

Although the legislative history was not clear, the Court accepted enhancement of traffic safety as the statute's objective. *Id.* at 199. The Court was wholly unconvinced by various statistical surveys, including showings that alcohol consumption and alcohol-related arrest and traffic fatality rates for 18-20 year old males exceeded that of females of the same ages. Focusing on a survey which indicated a .02 percent differential in alcohol related driving arrests, the Court noted:

While such a disparity is not trivial in a statistical sense, it hardly can form the basis for employment of a gender line as a classifying device. Certainly if maleness is to serve as a proxy for drinking and driving, a correlation of 2 percent must be considered an unduly tenuous "fit". *Id.* at 201 and 202.

The Court further opined that "the showing offered by the appellees does satisfy us that sex represents a legitimate, accurate proxy for the regulation of drinking and driving." *Id.* at 204. In fact, the Court stated, "[e]ven were this statistical evidence accepted as accurate, it nevertheless offers only a weak answer to the equal protection question presented here. *Id.* at 201.

The *Craig* cases also importantly indicates that the proper test for examining sex-based classifications is somewhere between a "rational basis" and "suspect class"

²⁵ The Court might also inquire whether the Congress has acted in an arbitrary or irrational way. See, e.g., *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1 (1976).

²⁶ See, e.g., *Weinberger v. Wiesenfeld*, 420 U.S. 636, 638, n. 2 (1975) where the Court stated:

While the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is so unjustifiable as to be violative of due process. . . . This Court's approach to Fifth Amendment equal protection claims has always been precisely the same as to equal protection claims under the Fourteenth Amendment.

²⁷ See, e.g., *Gardner v. Board of Public Works*, 341 U.S. 716 (1951), reh. denied, 342 U.S. 843 (1951).

²⁸ See, *Nixon v. Administrator of General Services*, 433 U.S. 425 (1977) for a more detailed discussion of these tests.

its. Id. at 210., specifically that "classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives." Id. at 197.

Although the Acts seem to permit insurers to increase but not decrease "periodic lump sum payments" under preexisting contracts with state approval, they also be construed to give insurers the authority, with state approval, to raise a female's life insurance premiums under a preexisting contract based upon sex. Analysis of *Frontiero* and *Craig* suggests that application of the Acts in the latter way violate the "equal protection clause".

Whatever the proper test might be, the significance of recent equal protection is that, under certain facts, the Court finds laws which create gender-based classifications should be subject to judicial scrutiny in a more searching manner than that afforded under the traditional "rational basis" test.

V. CONCLUSION AND RECOMMENDATION

Preliminary analysis of the retroactive provisions of the Acts, in light of various constitutional provisions and of the relevant Supreme Court cases decided thereunder indicates they may have serious Constitutional infirmities under the "due process" when either "contract clause" or equal protection analysis is employed. The committee recommends that the Congress give greater attention to studying the retroactive provisions of the Acts, the necessity, if any, for them and the effects on insured persons, employers, insurers, state and local governments and citizens. We respectfully suggest that the Congress consider amending the Acts to address the potential constitutional infirmities discussed herein.

As to other alternatives, the Committee recommends that the Congress consider deleting all retroactive provisions from the Acts, making them applicable only to insurance contracts entered into on or after the effective date.

REVIEW OF A REPORT ON THE COST STUDY OF THE IMPACT OF AN EQUAL BENEFITS RULE ON PENSION BENEFITS

(By Donald S. Grubbs, Jr., F.S.A., George B. Buck Consulting Actuaries, Inc.)

Introduction

The views presented are those of the author and do not represent his employer or any other person.

I have reviewed the report entitled, "Cost Study of the Impact of an Equal Benefits Rule on Pension Benefits," dated January, 1983 and prepared by Dr. Marguerite Connerton of the Office of Regulatory Economics, Office of the Assistant Secretary for Policy, U.S. Department of Labor, (hereinafter "the Report"). This presents some observations based upon my review of the Report.

The Report presents the economic implication of requiring employers to pay equal payments under pension plans to similarly situated men and women. Several decisions of U.S. Courts of Appeal have determined that equal payments are already required by Title VII of the Civil Rights Act, and the U.S. Supreme Court is not considering this issue. To whatever extent equal payments are already required by Title VII, there is of course no effect and no additional cost of new legislation or regulations which merely reiterate these existing requirements.

There appears to be some uncertainty whether H.R. 100 applies to uninsured benefit plans. This is because of the circuitous definitions of section 3 of the bill. "Insurance" means an arrangement provided by an "insurer", and "insurer" means a person who engages in the business of "insurance." About two-thirds of all pensions are provided on an uninsured basis. The Report endeavors to measure the costs that apply to both insured and uninsured plans. If H.R. 100 does not apply to uninsured plans, its costs would be much less than if it applies to all plans.

The Report presents some useful information. However, the cost estimates are based upon a number of fundamental errors and the resulting costs are consequently very substantially overstated. In addition there are a number of errors in detail.

The major fundamental errors in the Report are as follows:

1. Misunderstanding of the potential and likely ways that plan sponsors can react.
2. Inadequate classification or definition of categories of retroactivity.
3. Omission of consideration of unequal early retirement factors and deferred retirement factors in defined benefit plans.
4. Omission of consideration of unequal premiums and benefits under individual life insurance contracts under defined contribution plans.
5. Use of inappropriate annuity rate defined contribution plans.

6. Failure to distinguish life annuities from other annuities, or incorrect data on the extent of unisex rates for life annuities under defined contribution plans.

7. Misconceptions concerning the actual operation of plans.

8. The requirement that all pension plans provide equal benefits for similarly situated males and females would generally have no significant costs with respect to employees not yet retired. However, a requirement for retroactive adjustment for life insurance policies previously purchased under defined contribution plans would have additional costs in the minority of plans affected, and would be most complex to implement. Requiring adjustments for persons already retired would create additional costs in both defined contribution plans and defined benefit plans. Requiring equal benefits under already existing annuity contracts provided under tax deferred annuities described in section 403(b) of the Internal Revenue Code would have additional costs and would be most complex to administer.

My comments on the definition and classification of retroactivity follow, and after that, comments on some specific items in the Report.

Retroactivity

A key element in the amount of relief provided and the cost of providing it is the extent to which the rules apply retroactively.

In no case could a requirement under Title VII affect those who retired before Title VII prohibited sex discrimination in employment. Retroactivity can depend upon when benefits accrue, when individuals retire, and when payments are made, and upon many combinations of these three elements.

These three elements provide ten alternative applications with respect to retroactivity as follows:

1. Future accruals only. (This would apply only to active employees, since employees already retired will have no future accruals.)

2. Accruals after *Manhart*. (This would not apply to those who retired before *Manhart*, since they had no accruals after *Manhart*.)

(a) Applied only to those who retire after the new rule, or

(b) Applied to all those who retire after *Manhart*, but only with respect to payment made after the new rule, or

(c) Applied to all those who retire after *Manhart*, with respect to payments made before or after the new rule.

3. All accruals—

(a) Applied only to those who retire after the new rule, or

(b) Applied to all those who retire after *Manhart*, but only with respect to payments made after the new rule, or

(c) Applied to all those who retire after *Manhart*, with respect to payments made before or after the new rule, or

(d) Applied to all past and future retirees, but only with respect to payments made after the new rule, or

(e) applied to all past and future retirees, but only with respect to payments made after *Manhart*, or

(f) Applied to all past and future retirees, with respect all payments made before or after the new rule.

If a new rule bases the degree of retroactivity upon when the benefit is accrued, it must decide what it means by "accrued". The concept of accrual may be subject to more than one interpretation. In a defined contribution plan, is an addition of investment income earned after the new rule on contributions made before the new rule to be treated as accrued before or after the new rule. In a final average pay defined benefit plan, is the increase in benefits based upon service prior to the new rule and pay raises after the new rule to be treated as accrued before or after the new rule? These varying possible interpretations greatly expand the ten alternatives suggested above.

In addition, various possible applications of the new rules to benefits funded under life insurance and annuity contracts issued before the new rules, further expand the possible alternatives.

The Report often fails to specify what it means by the terms "prospective" and "retrospective". It appears to use these terms in two entirely different senses and to confuse the two differing uses. For active employees, it appears to use "prospective" to refer to benefits that accrue after the new rule, but for retired employees it appears to use the term "prospective" to refer to benefits paid in the future even though all such benefits accrued in the past (footnote 37). The Report apparently assumes, for example, that the new rule might simultaneously require application to these two types of "prospective" benefits. Surely the new rule would not simultaneously require that future payments to current active employees be adjusted only

for future accruals and also require that future payments for those already retire be adjusted for past accruals. Under that combination an employee retiring the day before the effective date would have his/her entire benefit adjusted while one retiring the day after the effective date would receive a miniscule adjustment for the final day's accrual. The Report could avoid this confusion if it were careful to specify when the words "prospective" and "retrospective" are being used to specify future and past accruals or future and past payments.

DETAILED COMMENTS

Section 10. Under many defined benefit plans, benefits under the normal form are unequal if the participant retires either before or after the normal retirement date, which most participants do. The Report ignores the effect of this.

The second paragraph may intend "annuities" to mean "life annuities" and not to include annuities for a period certain. This distinction, which has a major effect on the results, should be specified. Only life annuities are affected by mortality tables. Annuities certain are always sex neutral. For life annuities, the percent using sex-based tables is close to 100 percent, not 74 percent.

The Report appears to ignore another sex difference under defined contribution plans, the purchase of life insurance policies that discriminate in favor of females.

Section 11. The report ignores the fact that under many defined benefit plans the early retirement benefits differ by sex, and that early retirement is more common than normal retirement. It also ignores the fact that in some plans benefits payable upon deferred retirement differ by sex.

The second paragraph states that under defined benefit plans the plan sponsor may provide additional optional forms of annuity. In fact the plan must provide a joint and survivor annuity unless it is one of those unusual defined benefit plans which provide no life annuity at all. ERISA § 205.

Section 12. The example in the footnote is incorrect, but harmless in its effect upon the Report.

Section 13. Item (3) should indicate that employers use unisex tables, with no reference to insurance companies. Most pensions are not insured.

Section 14. By assuming that all conversions are simple life annuities with no refund, the Report tends to overstate the costs.

Section 15. The Report appears to confuse when benefits are paid with when they accrue.

Sections 17-18. The statement that individual annuities would provide 12.5 percent less than annuities under the plan is incorrect. First, under many plans the annuities are already provided by individual annuity contracts purchased under the plan; in these cases there would be no reduction at all. Where group annuities are now used under the plan, purchase of individual annuities instead would lead to a reduction, but I think 12.5 percent overstates it. The Report provides no explanation of how it arrived at the 12.5 percent and \$100 million estimates, but it may have involved the same problems as are discussed in connection with pages 34-45. If plans eliminated the life annuity option, not all those who would have received a life annuity under the plan (in many cases because it was required) will purchase an individual one.

Sections 18-21. The Report incorrectly assumes that plans now guarantee the rates that will be used in the future. They do not. The rates used change frequently, both up and down, primarily in response to interest rate changes. Some plans contain very conservative rate guarantees, but these guaranteed rates are never used in any event. The rates available at the annuity commencement date, whether based upon sex distinct factors or unisex factors, would provide far more income than those determined under the guaranteed rates. Thus plans can switch to unisex rates which will provide all future retirees of both sexes with more income than the guaranteed rates, and there is no cost whatsoever. The only topping-up cost would be for those whose annuities have already commenced. For example, in the *Norris* case for each \$1,000 available at age 65, the plan guarantees to provide a monthly income of \$5.94 for females and \$6.57 for males. But annuities actually recently available in the market place would provide \$9.94 for females and \$10.67 for males. A change to unisex rates between \$9.94 and \$10.67 would provide both males and females more than the plan has promised them, with no additional cost. The cost at the bottom of page 18 is \$0, not \$139-\$309 million. Other costs should be reduced by this amount. For post-Manhart retirees, do the "prospective" costs refer only to prospective payments of benefits accrued after Manhart, or do they include prospective payments of benefits accrued before Manhart?

Similarly on page 19, all amounts referring to future retirees should be \$0.

Section 22. The Report is correct that equalizing the benefits for males and females under defined contribution plans would reduce prospective benefits for males and increase them for females. If the unisex pricing is done appropriately, or in any event if the annuities are provided under a trust or under experience-rated annuity contracts, the aggregate amount of decrease will equal the aggregate amount of increase and there will be no cost to the plan. The Report apparently failed to properly reflect the proportion of annuities provided to each sex; there is no reason to expect that ratemakers would ignore the proportion of annuities to be issued to the two sexes.

Sections 22-23. The adjustment of pensions for those already retired, shown at the bottom of page 22 and top of page 23, would be an additional cost. The Report does not provide sufficient data or information on the methods used to allow any independent review of the amounts shown.

Section 23. On the third line of the second paragraph, "as the normal form" should be added after "annuities" to make the sentence correct.

The sentence in parentheses needs clarified. Does it mean that, of all current female retirees who are receiving life annuities in defined contribution plans, 10 percent are receiving them as a normal form rather than an optimal form and therefore would need supplements? The source of the 10 percent assumption is not stated.

Sections 24-27. Except for employees already retired, there is no reason to expect that employers would elect the topping-up approach to the change in option factors. In our experience employers that have changed their option factors to eliminate sex discrimination have usually adopted unisex factors with no significant effect on costs. Thus none of the costs reported for defined benefit plans on pages 24-27 except the costs for those already retired are valid. The change in interest rates incorporated into most changes in option factors usually have a much larger effect than changes in the mortality basis. The Report ignores changes in early retirement and deferred retirement factors.

Section 27. The Report discusses pensions as though all were insured. About two-thirds are not funded with insurance companies.

The phrase, "If intermediate benefit levels are allowed for active participants," shows a misunderstanding. Plans can change actuarial assumptions at any time, and often do so. Most changes are made to reflect a change in the interest assumption. Even if intermediate mortality assumptions were not allowed, nothing could prevent a change in the interest assumption to offset any increase in cost related to the mortality assumption.

The Report appears to assume that unisex rates would be midway between male and female rates. Some employers have instead adopted unisex rates weighted to reflect the relative liabilities for males and females.

Sections 27-29. Requiring that all benefits be equal would have almost no cost for current active employees.

Sections 31-33. The three tales are substantially incorrect for the various reasons previously cited.

Sections 34-75. The Report ignores the non-profit mutual nature of some of the largest providers of life annuities under defined contributions plans, such as TIAA-CREF and NHW. If these organizations have to pick up any extra cost, it will reduce their surplus and thence reduce future dividend and interest credits. These organizations, by their non-profit nature, ultimately pass on all gains and losses attributable to defined contribution plans to the participants. Any added cost attributable to one participant will be borne by other participants.

Sections 34-45. The section on "cash only option," under defined contribution plans appears designed to produce the largest possible number rather than a best estimate. The amounts are determined assuming that every employer would eliminate the life annuity option, an obvious overstatement. It assumes that every employee who now receives a benefit in the form of a life annuity would decide to purchase a life annuity under an individual annuity contract, including those who are currently forced to buy a life annuity. It ignores the fact that many defined contribution plans offer a third alternative to lump sums or a life annuity—payment of the benefit in installments over a period of years. It assumes that all annuities currently provided have been purchased under group annuity contracts, whereas part of them have already been purchased under individual contracts using the same rates as would be available to an individual. It used PBGC rates to estimate the rates in current use under group annuity contracts, a substantial misstatement since the rates used to purchase individual annuities at retirement under group annuity contracts are frequently less favorable than those used on plan termination represented by PBGC rates. The report used individual annuity rates as of 8/1/81,

but apparently used PBC rates at their highpoint as of 11/1/81. Using consistent data (PBGC rates as of 8/1/81) approximately 33 percent of the difference indicated in Table 7 would have been eliminated. The report fails to state whether, in selecting individual annuity rates, it used the lower rates available to IRAs or the higher non-qualified rates. But even this would be incorrect. The PBGC rates represent the rates available under group annuity contracts for terminated plans, not the quite different rates available to purchase annuities under ongoing plans. Based upon our experience with some major insurers, I estimate that adjusting Table 7 by this difference plus the inconsistency noted above would eliminate approximately 64 percent of the difference shown in Table 7. In addition, many annuities purchased under plans currently are under the same individual rates available to individuals outside the plan.

Section 47. The Report refers to 26.6 percent of defined contribution plans which offer annuities on a sex-neutral basis. It fails to indicate whether it intends "annuities" to mean only "life annuities" or whether it also includes annuities certain. For annuities certain no mortality table at all is used. If "life annuities" is intended, the 26.6 percent is clearly wrong; the correct number is close to 0 percent.

Sections 48-57. The whole concept of topping-up benefits for active employees is based upon the incorrect notion that future annuity purchase rates are currently guaranteed. They are not. They can be changed at any time, and frequently are changed. Unless it is known what one is topping up to, it is impossible to top up. There is no approach to requiring different annuity rates for future annuity purchases that cannot be offset by a change in the rates for both males and females. Thus there are no topping-up cost for active employees. For annuities already purchased for retirees, topping up is a valid concept and is the only way to get equal benefits.

Sections 50-57. The Report does not consider the possibility of topping up for males to reflect the higher premiums subtracted from their accounts to purchase individual insurance contracts, or the extent to which this may offset the difference in annuity purchase rates.

Section 60. The Report misunderstands the possible ways of effecting a remedy to produce equal benefits for employees not yet retired under defined contribution plans. One way is to require that annuity purchase rates used in the future be equal for males and females, an approach that requires no additional employer contribution at all. A second theoretically possible approach would be to continue to use sex different annuity purchase rates but to make a supplemental contribution at the annuity commencement date for each female electing a life annuity, in an amount sufficient to purchase a supplemental life annuity. A third theoretically possible approach is for the employer to supplement each month's annuity payment with a monthly payment made outside of the plan. By its nature a defined contribution plan never has an unfunded liability and thus ERISA's amortization periods for unfunded liabilities are inapplicable. Page 73 suggests using an actuarially-based side fund not allocated to individual participants, an approach apparently prohibited by I.R.S. for defined contribution plans (Rev. Rul. 70-125; Publication 778 Part 2(t)).

Sections 63-67. The ACLI estimate is erroneous, and is an enormous overstatement even if retroactive adjustments are required for all those currently retired. The errors of the ACLI are far more fundamental than those mentioned on pages 63-67. These comments do not include an analysis of the ACLI's self-serving errors.

Sections 68-71. The Report assumes that all defined contribution plans would select unisex factors that reduce men's benefits in the aggregate by \$17.1 million and increase women's benefits by \$9.9 million resulting in a \$7.2 million profit for some party. What is proposed to be done with the extra \$7.2 million? It may not revert to the employer (ERISA § 403(c)). Under programs like TIAA-CREF and NHW any gains of the funding medium are plowed back in as dividends to increase benefits. To the extent annuities are purchased in the market place, employer selective purchasing and the competition of the market place are not apt to allow insurance companies a larger profit margin than they now enjoy. The apparent anomaly on page 71 results from the Report's selection of the 73-27 ratio for developing unisex tables instead of a ratio representing the difference in the present value at maturity of the benefits to be funded, an approach which would roughly balance the apparent gains and losses.

Section 72. It is unrealistic to think that the plans not now allowing a cash option would switch to allowing one. These are primarily plans funded by TIAA-CREF, NHW and others who share their paternalistic (parental?) philosophy of plan design. They do not generally allow a cash option for fear retirees will spend it and be in poverty in their old age. A mere problem with unisex factors is not apt to change anything so fundamental.

Section 73. No basis is given for the 10 percent estimate.

Section 75. For new employees there would be no additional costs, and thus there would be no disincentive for hiring women.

Section 77-81. There is no effective way to require plans to adopt the topping up approach for future retirees, since plans can change their option factors at any time, and often do, primarily to adjust the interest assumption. The topping up approach could be required with respect to the accrued benefit under the anti-cutback rule (I.R.C. § 411(d)(6)), but future accruals generally soon wash out the effect of the grandfathered (grandparented?) accrued benefit, so there is no significant cost effect.

Section 86. The joint and survivor option requirement became effective for most plans in 1976, not 1978.

Sections 85-87. The ACLI estimate grossly overstates the cost, but is not analyzed in these comments.

Sections 87-93. This repeats the errors of the prior section.

Appendix A. The description provides no indication of the basis for most of the assumptions described.

The 26 percent for defined contribution plans is both incorrect and misleading. Many defined contribution plans do not pay benefits in the form of a life annuity; in these plans there are no conversion tables involving mortality rates and no issue of sex discrimination arises. For those plans which include conversion tables involving mortality rates, virtually none use unisex conversion tables.

The 74 percent and 34 percent estimates represent two very different views. At least one is clearly wrong.

Appendix B. The second question asked on telephone interviews was ambiguous. The term "normal form" is used in two very different senses. Some use it to refer to the unreduced form of benefit. Others use it to refer to the automatic form of benefit. The typical defined benefit plan uses the single life annuity as the unreduced form of benefit, but the automatic form of benefit is joint and survivor for married participants; for such a plan some might describe the "normal form" as "single life annuity" while others might describe it as "joint and survivor."

STATEMENT OF THE STATE FARM INSURANCE CO'S.

This statement is submitted on behalf of the State Farm Insurance Companies. State Farm is a major writer of individual personal lines insurance. The Committee has heard from others regarding the many problems this bill would create in the areas of pensions and life and health insurance. As one of the top writers of individual life insurance, State Farm shares these concerns, particularly as to the adverse impact on costs for our female policyholders. In sum, the State Farm believes it is against sound public policy to ignore the reality of actuarial tables which clearly indicate that the average life span of women exceeds that of men.

However, State Farm is also a major property and casualty insurer, and takes this opportunity to address the company's particular concern with the effect that S. 372 (and H.R. 100) would have on the automobile insurance market for young drivers.

In our view, application of S. 372 in the automobile insurance market would ill-serve our policyholders and the public generally. Specifically, this legislation would work a severe economic hardship and unfairness on those State Farm policyholders who pay premiums based on use of the automobile by youthful females, forcing them in the aggregate to pay \$120 million more per year for automobile insurance than they now pay, an average increase of approximately 25 percent.

At the same time, the bill would unfairly and unwisely subsidize the insurance costs of youthful male drivers, a group that is responsible for more accidents and far more vehicular deaths than any other. If insurers are unable to set rates that reflect the true cost of insuring these youthful male risks, they may prove increasingly reluctant to insure young drivers at all in the voluntary market. Finally, we are concerned that this subsidization of youthful male drivers may result in more bad drivers on the road and more highway accidents.

THE BUSINESS OF INSURANCE AND THE CLASSIFICATION OF RISKS

The purpose of insurance is to protect insureds from the economic consequences of accidental loss. This is done by contractually transferring the insureds' uncertainty about the time and size of loss to the insurer in return for the certainty of a smaller regularly scheduled payment—the "premium." In setting premium levels, automobile insurers must calculate future predicted losses, estimating the probability of occurrence of accidents, theft, vandalism, fire, and other insured-against events and, in addition, the likely magnitude of anticipated losses. Particular events cannot be

predicted with complete accuracy—if they could, there would be no need for insurance.

Yet, basic fairness and the efficient working of the competitive marketplace dictate that the price of insurance to a particular class of insureds should vary with the probability of their experiencing a loss and the expected size of that loss. Insurers must therefore compute the expected loss for each pool of insureds. Many factors enter into this equation. The probability of having an accident and the likely cost per accident differ considerably among drivers; across makes of car; and by the places the car is driven and parked.

Cars that are less susceptible to damage, such as those having a well-designed 5-mile-per-hour bumper, will produce lower loss costs. As the same time, a thief will be more likely to steal a new BMW than an old Dodge. These loss differentials are reflected in insurance rates. This is only fair.

The risk and cost of being involved in an accident are similarly affected by the physical environment in which the motorists drive. The number of cars on the road, condition of the surface, climate, terrain, and police effectiveness all influence accident rates. The costs of repairs, the size of jury awards, the incidence of theft and vandalism, and even the severity of injury also vary by geographic area. In general, State Farm has found that accidents are far more frequent in large cities than in smaller towns and rural areas. Conversely, serious injuries are proportionately higher in rural areas, where collisions occur at higher speeds.

Again, like virtually all other automobile insurers, State Farm takes such factors into account in calculating the rates it charges. This, too, is only fair.

However, the cost of providing insurance also varies significantly with certain characteristics of the persons who regularly drive the cars, such as their age, their marital status, and their gender. Specifically, data compiled by the National Safety Council reveal that, in 1981, 36 percent of all accidents involved drivers under the age of 25 although this age group amounted to just 21.7 percent of the driving public in that year. These drivers were involved in accidents at roughly twice the rate of drivers 25 and older.

The statistics on fatal accidents are equally telling. In 1981, drivers under the age of 25 were involved in 35.7 percent of all fatal crashes. This amounts to nearly twice as many fatal crashes per driver as involved drivers over 25. And, according to a 1982 Insurance Institute for Highway Safety study, teenaged drivers are responsible for approximately five times as many crash deaths per license holder as drivers aged 35-64.

Automobile insurers reflect these differentials in their rates. This comports with basic fairness and makes good business sense. It also comports with public preferences. In a national poll conducted for the All-Industry Research Advisory Council by Yankelovich, Skelly and White, a majority of those surveyed felt that people falling in high-risk categories should pay higher insurance rates than the average driver. Only 4 percent of the responding public, moreover, were willing to pay over \$5 more per year to lower the rates now charged to these higher-risk groups.

Charging different rates for automobiles operated by young, higher-risk drivers is also good public policy. Higher rates may discourage the young from driving, or their parents from letting them drive. Statistics indicate that driving improves after age 25. Economic forces that limit the amount of driving by drivers below that age should therefore be encouraged.

The young, however, do not have a uniformly high average loss experience. Young female drivers, as a group, have substantially fewer accidents and a dramatically lower percentage of fatal accidents than do young male drivers. For example, statistics show that in 1979 California male drivers under 25 reported almost 1½ times as many accidents as young female drivers, while in 1981 young male drivers in New York and South Carolina reported 2 times and 1.85 times as many accidents, respectively, as did young females. More importantly, the IIHS found that of the 6,086 passenger vehicle occupant deaths studied for which teenagers were responsible in 1978, males were responsible for 84 percent and females for just 16 percent—a ratio of five to one. Finally, according to a California study described in the California Driver Fact Book, only 15 percent of male teenagers, as compared with 44 percent of female teenagers, have neither accidents nor convictions in their first four years of driving.

The facts, then, are clear. Young male drivers, as a group are disproportionately likely to be responsible for more—and more serious—automobile accidents.

Not surprisingly, it is more costly to insure cars driven by such drivers. Young single male drivers present a substantially greater level of exposure for every type of automobile insurance—liability, collision, and comprehensive. State Farm's statistics show that there are 23 percent more claims under liability coverage, 30 percent

more claims under collision coverage, and 39 percent more claims under comprehensive coverage for cars driven by young males than for those driven by young female drivers. At the same time, the average loss per insured car is 53 percent higher, and the average claim is 17 percent higher, for cars operated by young men.

S. 372 WOULD FORCE INSURERS TO IGNORE THE FACTS

S. 372 would force us to ignore completely our experience with young male drivers. It would force us instead to discriminate against young women, who, as a group, are safer drivers than young men—to pretend, in effect, that their gender is irrelevant to their likelihood of involvement in accidents, and the expected severity of their accidents.

If young male drivers as a group have in the past consistently been responsible for more, and more serious, automobile accidents, and if there is nothing to indicate that as a group these drivers have changed their driving habits, insurers should be able to take these facts into account in setting their rates. This is not penalizing young men. It is simply charging them what insurers' experience with this group indicates is a proper price. Fairness and economic sense demand this result.

S. 372 WOULD BE UNFAIR

Enactment of this bill in its present form would be profoundly unfair to policyholders who pay the premiums for cars operated by young females. It would, moreover, be of questionable value to young drivers generally. For State Farm, insurance for cars operated by young women would increase by \$120 million annually—an average increase of approximately 25 percent each for affected policies. State Farm's calculations demonstrate that S. 372 would have the following specific effect on premiums for typical automobiles operated by young females in various cities across the nation:

In Portland, Oregon, State Farm's rates for a 23-year-old principal operator would rise from \$564 to \$770; State Farm's premiums for a 19-year-old occasional female operator would rise from \$550 to \$661.

In Charleston, South Carolina, State Farm's rates for a 23-year-old principal operator would rise from \$370 to \$617; State Farm's premiums for a 19-year-old occasional female operator would rise from \$349 to \$473.

Similar effects would be felt in other jurisdictions. State Farm's rates for 23-year-old female principal operators would rise by \$145 in Birmingham, Alabama; \$177 in Anchorage, Alaska; \$196 in Phoenix, Arizona; \$122 in Topeka, Kansas; \$141 in Louisville, Kentucky; \$175 in New Orleans, Louisiana; \$233 in St. Louis, Missouri; \$157 in Omaha, Nebraska; \$361 in Newark, New Jersey; \$406 in New York City; \$455 in Philadelphia, Pennsylvania; \$121 in Pierre, South Dakota; \$162 in Richmond, Virginia; \$165 in Seattle, Washington; and \$200 in Milwaukee, Wisconsin.

These numbers are particularly compelling in light of the survey, discussed above, which reveals that the vast majority of the insured public is unwilling to shoulder more than a \$5 increase in annual premiums to provide lower premiums to accident-free members of high-risk groups.

S. 372 WOULD CAUSE UNDESIRABLE MARKET DISLOCATIONS

Beyond this, subsidizing youthful males would cause market dislocations that benefit no one. By mandating artificially reduced rates and thus lower insurance profits for our more accident-prone young male drivers, S. 372 would create a clear financial incentive to insurers to offer coverage on a selective basis, seeking out young women and avoiding young men. If all such behavior were illegal under the proposed bill, many insurers might tend to reduce the insurance they offer to young drivers generally. The voluntary market for automobile insurance for people under 25 would shrink, and the number of young people forced into the residual (and generally more expensive) market would grow.

In this connection, the Massachusetts experience is instructive. In that state, the use of gender-based automobile rates has been prohibited since 1977 by order of the Insurance Commissioner. Although other factors undoubtedly contribute to this result, approximately 90 percent of all young male drivers and 70 percent of all young female drivers in that state have been forced into the residual reinsurance market.

NO ADEQUATE SUBSTITUTE FOR GENDER-BASED RATING EXISTS FOR AUTOMOBILE INSURANCE

Supporters of S. 372 have suggested that alternative bases for classifying risk are readily available to the insurance industry. However, after years of investigation of

this issue at the state level, no fair and effective substitute for gender in rating young drivers has been found.

Contrary to statements made in the Committee Report on last year's version of S. 372 (S. 2204), the automobile insurance gender gap cannot be explained on the basis of driving mileage alone. Even though men drive more than women, gender-based accident rate differentials persist. Statistics reported in the California Driver Fact Book confirm that men have worse accident rates than do women within each mileage category. A study by the California Department of Public Works and the Federal Highway Administration that tracked more than 14 million drivers over a five-year period found that, when ranked by a composite index of driver performance adjusted for mileage, male drivers still had driving records at least 46 percent worse than their female counterparts. Data compiled by the National Safety Council similarly reflect that the overall accident rate per mile driven by male drivers during the period from 1965 to 1980 was 20 percent greater than that for female drivers. The figures on fatal accidents were even more striking: from 1965 to 1980, men were involved in 2.25 times as many fatal accidents per mile driven as were women.

Although individual accident rates do vary with miles driven, many insurers, including State Farm, in fact have classifications which take automobile usage into account. These classifications include whether the automobile is used for business or pleasure and whether the automobile is used for commuting. A number of insurers also have mileage classifications. For example, State Farm has a classification of above and below 7,500 miles for automobiles operated by drivers over 25.

Even if mileage were in theory a complete substitute for gender, insurers would be unable to determine projected mileage with the necessary accuracy. This is true of all drivers. It is obviously so where new, or even occasional, drivers are concerned. At the same time, studies comparing self-reported mileage and odometer readings raise serious questions as to the accuracy of non-mechanical methods for gauging miles driven. Finally, adequately detailed information, by driver, on the use of a given automobile would be impossible to keep up-to-date.

The fact is that gender *does* correlate strongly with the likelihood and severity of accidents. Young men, more than young women, for example, may tend to drive at night when accident rates are higher for all drivers; to drink and drive; and to place themselves in situations where the risk of personal harm is high. Such causal factors, however, are impossible for insurers to gauge with any accuracy without significant expenditure and invasion of privacy. Indeed, in the 1960's, insurers were encouraged on privacy grounds to move away from underwriting on the basis of subjective factors requiring an inquiry into the personal lives and habits of their policyholders. Should we now move back toward a more subjective underwriting and rating system that focuses on individual lifestyles?

State Farm, like most automobile insurers, already uses readily measurable classifications, such as marital status and school grades, that relate a driver's personal characteristics to group accident experience. We also factor in accident history. These additional factors simply further refine the categories of insured risks into those with comparable expected loss potential. While these factors help to predict the expected loss for a particular insured car, they do not, nor could they, predict individual accidents. Accidents remain relatively infrequent occurrences. Individual history cannot, therefore, serve as the sole, or even the primary, rating criterion. Indeed, statistics reveal that it takes extremely long experience periods—a minimum of 15 to 20 years—for accident records alone to discriminate between good and bad drivers.

Nor, as statistics are presently compiled in most states, may individual accident histories readily be determined. According to a March 1981 study by the All-Industry Research Advisory Council, in two-thirds of the states, fewer than 50 percent of all accidents studied were recorded in state motor vehicle records. Only 24 states reported as many as one accident in three. State records, moreover, are not even available to insurers in ten jurisdictions.

Personal driving history, then, cannot serve as a substitute for other valid rating criteria. This is particularly so, moreover, as to youthful drivers. The young simply do not have the extensive driving history required if experience to serve as a reliable indicator of future risk.

CONCLUSION

Even if different predictors of accident exposure could be developed, the result would be much like the situation we have today: once those predictors were factored into rate-setting, young male drivers would end up, by and large, with higher insurance costs. Ironically, in light of this bill's proscription against charges based "indi-

rectly" on sex and the potential application of an "effects test" to alleged violations of this legislation, the use of otherwise permissible risk factors might not pass scrutiny under S. 372 as currently drafted. While the upshot of such an analysis remains uncertain, it nevertheless seems a useless exercise to force reliance on alternative factors to arrive at much the same situation we now have.

We believe these considerations underscore the serious ramifications for the automobile insurance industry of the Fair Practices in Insurance Act. Automobile insurance must be priced before drivers have an accident, before they are critically injured or have caused such injury to others. Yet, in order to be fair, the price paid by each driver should reflect—so far as reasonably possible—the probability that that driver will be involved in an accident, and the probable size of any ensuing claim. As far as our most dangerous drivers—our youth—are concerned, age, sex, and marital status are key to reliable performance of this function.

To force the automobile insurance industry to ignore these facts will cause severe distortions in the market and unfair additional expense to our youthful female drivers. We urge the Committee not to allow this to occur.

[Press release]

INSURANCE ECONOMICS SOCIETY OF AMERICA,
Washington, D.C. May 6, 1983.

A 22-year-old woman, Laurie Anne Metzner, asks: "Just Who Is Discriminating Against Women?"

"Many women will be 'screaming, hopping, fighting mad' should the bill requiring uni-sex rates in insurance be passed, an Oregon insurance executive warned a U.S. Senate Committee. I would like to join those ranks. At first glance, the whole issue of alleged sex discrimination in insurance seemed cut and dried to this '82 college grad—using a person's gender in the calculation of insurance rates and benefits sure does sound like discrimination. Why would the insurance companies do it then?"

"Well, I've learned that there are some very valid reasons for it. Basically, women as a group live longer than men (hence, a lower pension annuity benefit stretched over a longer period of time equals out) and the damages and death caused by women drivers are markedly less severe (hence a fair reduction in the car insurance rates we are required to pay). But my personal reasons for opposing this bill, HR100-S372, reach down deeper into what it would actually mean to raise a female's auto insurance rate, and lower the male's in order that they meet somewhere in between. Let me explain:

"Back in my high school days on Long Island, something happened that has left a sad, never-to-be-forgotten impression on me. One evening in a local bar, a young man offered two teenaged girls a lift home (all 3 came from my school, except the male had graduated 2 or 3 years prior). What follows is not a pleasant story, but the young man, upon attempting a quick turn at 80 mph, in a 30 mph speed zone, crashed and killed the two young girls. Needless to say, the next few days at school were tearful and quite somber.

"I'm sure that all of us have similar stories to tell—with almost all of them involving male drivers. Now here's where my problem with the uni-sex insurance rate bill comes in. What I and the rest of the female population will be asked to do is to literally pay for all the accidents and deaths caused by male drivers. Why should I be responsible for them and bear their burden? This sounds more like discrimination to me. Who are the supporters of this legislation protecting anyway?"

"Another point at hand, which also bothers me, is a financial one. A figure of \$700 million has been calculated to indicate how much more women will be paying for their auto insurance as a result of the new bill. It certainly does sound like a lot of money, but what does that mean to me as an individual?"

"In order to answer that very same question, I made some phone calls to obtain more personal figures. The obvious thing to do was to ask the leading auto insurance companies what they currently charge for a year's full coverage on a new policy for a single, 22-year-old female and male driver, living in Georgetown, Washington DC and with no previous violation or accident history. Here are the results:

1980 FORD FAIRMONT (2 door)

	Male	Female	Current female savings
Average annual premium from 3 insurance companies.....	\$1,072	\$683	\$388

"On the average, there is a \$400 difference between cost to males and cost to females—meaning a \$200 to \$300 increase for myself and a corresponding \$100 to \$200 decrease for the guy next door, if HR100-S372 is passed. Taking \$300 out of my pocketbook is a figure I can relate to much easier than \$700 million for all women. It should prompt each woman to realize and enumerate its value. To me, it amounts to one month's apartment rent, or lunch every working day for a year, or 1/2 of my yearly student loan payments or one week's pay. Don't they realize what that implies? I will have one week's less pay to enjoy (used to cover the higher risk male), while males can tack on extra pay (the \$100 gain they would receive by paying less for auto insurance). And they generally get paid more than females do to begin with! It's beginning to look more and more as though discrimination will be increased against women with the enactment of the uni-sex bill.

"A final point. A retired Arizona state employee, whose case before the Supreme Court could have the same effect as HR100-S372, say that getting the extra \$34 a month pension that male state retirees receive would help her pay her bills. I'm sure it would. But must I pay \$25 a month more for auto insurance so she can have her \$34 . . . women like me who are just starting out with nothing but the burden of student loans and high Social Security taxes versus retirees who have pensions, a lifetime of savings and goodness knows what else to their names?"

Note.—Laurie Anne Metzner is a 1982 graduate of Georgetown University. She is an Associate Editor of the newsletter "Insurance Economics Surveys," 1700 Pennsylvania Ave. N.W., Suite 590 Washington, D.C.

AMERICAN ASSOCIATION OF UNIVERSITY WOMEN,
MARYLAND STATE DIVISION,
March 25, 1983.

HON. CHARLES MCC. MATHIAS,
The U.S. Senate,
Washington, D.C.

DEAR SENATOR MATHIAS: I urge the passage of Senate Bill 372, the Fair Insurance Practices Act, without amendment.

I speak for the members of the Maryland State Division of the American Association of University Women. We have been studying the inequities of insurance coverage for women during the past two years under the general topic of Money Talks.

Addressing the life insurance issue, our reading of statistics reveals that gender is not a determinant of mortality; hence, we believe better criteria for the schedule of premiums is overdue.

We would like our position known at the hearings of S. 372 on April 12.

Yours sincerely,

MARTHA L. GARRISON.

AMERICAN ASSOCIATION OF UNIVERSITY WOMEN,
MARYLAND STATE DIVISION,
March 29, 1983.

HON. CHARLES MCC. MATHIAS,
The U.S. Senate,
Washington, D.C.

DEAR SENATOR MATHIAS: I urge the passage of S. 372, the Fair Insurance Practices Act, without amendment.

I speak for the members of the Laurel Branch of the American Association of University Women. We have been studying the inequities of insurance coverage for women during the past two years under the general topic of Money Talks.

We would like our position known at the hearings on S. 372 on April 12.

Sincerely yours,

ANGIE LINN,
Legislative Chair, Laurel Branch.

THE BANKERS LIFE,
Atlanta, Ga., May 17, 1983.

Hon. Bob Packwood,
*U.S. Senate,
Washington, D.C.*

This letter is to voice opposition to Bill #372. As a member of the insurance industry, I can say that our offering lower rates for life insurance to women has been fair and equitable because of the fact that their lifespan is longer than men.

I would like to propose that this bill either be amended or withdrawn for further study. If this is done then perhaps a compromise can be reached which is responsive to the insurance industry, the mentioned bills, and most importantly, the American consumer.

A list of the proposed amendments I would suggest are as follows:

1. complete elimination of the retroactive features
2. application of the bills to all plans and coverages, public as well as private, self-insured as well as insured
3. provision for adequate implementation time (only 90 days in present bill)
4. preservation of basic group insurance concepts such as experience rating and
5. establishment of fair and functional enforcement provisions

Thank you for entertaining my suggestions.

Sincerely,

ARTHUR C. FORREST.

AMERICAN LEGISLATIVE EXCHANGE COUNCIL,
Washington, D.C., May 23, 1983.

Ms. CINDY DOUGLAS,
*Senate Commerce Committee,
Washington, D.C.*

DEAR CINDY: I appreciate your taking the time to notify me that your committee will still accept written testimony regarding the unisex insurance legislation. The person we had requested to testify, Senator Norma Russell, has asked me to submit our May issue of *The State Factor* as her written testimony. Enclosed is a copy of that publication. The data on Senator Russell is as follows: Senator Norma C. Russell, Rt. 6 Box 338-K5, Columbia, South Carolina 29210.

Once again I would like to express my appreciation for your attention to our requests.

Sincerely,

J. DANIEL BRAY,
Director of Research.

Enclosure.



The State Factor

May, 1983

UNISEX INSURANCE

Should current gender-based distinctions be continued in insurance rates and pension benefits? Are women economically disadvantaged by this practice? What would the financial impact of outlawing this practice be? These are the questions addressed by this issue of *The State Factor*.

INTRODUCTION

Legislation is pending in Congress which would prohibit insurance companies from considering factors related to gender in establishing insurance rates and pension benefits. Four states have already passed such legislation and the Supreme Court is currently considering a challenge to pension plans which pay different monthly benefits to men and women because of their differing life expectancies.

Supporters of so called sex-neutral legislation contend that it is a basic "women's issue" that involves the fundamental right to equal treatment. This is disputed by other women activists who cite evidence which demonstrates that American families and women in particular will be financially penalized by this legislation. A somewhat curious alliance has developed on this issue. Both business groups and state and local governments are opposing the legislation on the grounds that it will impose enormous financial burdens on them. In addition, the effort to ban gender distinctions in insurance is opposed by the insurance industry which argues that it would abolish a long-standing, actuarially sound, and competitively necessary practice.

The ramifications of a Supreme Court decision banning sex-related distinction in the insurance industry, or federal or state legislation to that effect, are immense. The financial implications are extremely important. Estimates of the cost of abolishing the practice range in the billions of dollars annually and raise concerns for the solvency of insurance companies, state and local governments' budgets, and the discontinuance of pension benefits offered by small employers. Additionally, there are important questions about the affordability and availability of life and auto insurance if underwriters are prohibited from considering the real differences between men and women. Perhaps most important in an issue as complex and fraught with emotion as this one is an examination of the motives of the advocates of so radical a change in our business and economic lives. Are they attempting to address a real need? Are they truly trying to right a genuine wrong or are they simply trying to impose their ideological preference on the rest of our society? These are important considerations for the state legislator who will be faced with intensive lobbying on this issue.

ESTIMATED DECREASE (IN DOLLARS) IN AUTO INSURANCE PREMIUMS
FOR SINGLE WOMEN UNDER PROPOSED UNISEX LAW

STATE	MINIMUM INCREASE	MAXIMUM INCREASE
ALABAMA	\$63	\$332
ALASKA	95	387
ARIZONA	86	377
ARKANSAS	66	253
CALIFORNIA	112	494
COLORADO	72	299
CONNECTICUT	138	578
DELAWARE	72	299
FLORIDA	60	312
GEORGIA	85	324
HAWAII		
IDAHO	65	277
ILLINOIS	79	347
INDIANA	64	299
IOWA	55	228
KANSAS	80	233
KENTUCKY	63	263
LOUISIANA	125	479
MAINE	69	283
MARYLAND	98	429
MASSACHUSETTS		
MICHIGAN	95	326
MINNESOTA	83	279
MISSISSIPPI	69	289
MISSOURI	77	228
MONTANA		
NEBRASKA	58	232
NEVADA	73	356
NEW HAMPSHIRE	95	366
NEW JERSEY	137	674
NEW MEXICO	77	261
NEW YORK	75	301
NORTH CAROLINA		
NORTH DAKOTA	61	254
OHIO	85	397
OKLAHOMA	85	195
OREGON	83	359
PENNSYLVANIA	71	828
RHODE ISLAND	95	393
SOUTH CAROLINA	114	288
SOUTH DAKOTA	59	291
TENNESSEE	66	280
TEXAS	9	308
UTAH	74	244
VERMONT	77	286
VIRGINIA	69	268
WASHINGTON	71	277
WEST VIRGINIA	96	289
WISCONSIN	63	312
WYOMING	74	243

THE INSURANCE INDUSTRY

Before the question of sex neutral insurance, as it is called by its advocates, can be examined it is important to understand the current practices of the industry. The purpose of insurance is to provide for unexpected but potentially devastating events. Each person faces the possibility of being involved in an automobile accident in which he could incur substantial expenses. Or, any single person may develop an illness which would require costly medical treatment that most simply could not afford. Any one of us may die prematurely and leave our dependents without any means of support. Not everyone will experience each of these disasters, or any of them. However, the possibility exists and prudence demands that that possibility be provided for.

The insurance industry developed as business moved to provide for the kind of unexpected but disastrous occurrences mentioned above. Different forms of insurance such as auto, health and life have developed for different kinds of protection but they all share one characteristic. For each type of insurance, relatively small amounts of money collected from large numbers of people are pooled together in order to provide a large payment to the unfortunate few who are involved in a car accident, experience medical problems or who die prematurely.

Because we have an open economy, many companies have entered the insurance business and the industry has become very competitive. In order to offer lower rates, and thus attract more customers, insurance companies have developed actuarial studies to help them determine more accurately the probability that an individual will experience an event that would entitle him to a payment from the company. The more accurately this probability is computed, the smaller is the margin the company must charge to ensure its ability to pay and the lower its premiums can be.

As competition developed, insurance companies refined their actuarial studies and began to distinguish groups which presented different risks. Those who were less risky could be offered smaller premiums and so be attracted as customers. This led to the development of many different rates for many different categories of people, based upon the general experience of the insurance companies.

Statistics demonstrate that women are more careful drivers than men. Women, on the average, have fewer and less damaging accidents than men do at every age bracket and amount of miles driven. Consequently automobile insurance rates for women are 18% to 66% less for women than for men. Statistics also demonstrate that, from every point in life after conception, women can expect to live eight years longer than men. Since there is less likelihood that a woman will die prematurely and so require a payment by an insurer, life insurance rates for women average 15% to 25% less than for men. There is a flip side to life expectancy for women. When it comes to pensions, the longer life expectancy of a woman is seen as a liability to a pension underwriter. Any payment which is to be made for the life of the woman will generally be made longer for a woman than a man. Therefore, if equal contributions are made, the monthly payments to a woman must be smaller. Since they will be made longer, the total payment remains equal. Alternatively, if the payments are to be held equal, the contributions to the retirement fund must be greater for women. This practice is what radical feminists have seized on as discriminatory and which led to the pending legislation and the current legal suits.

THE FEMINISTS' ARGUMENT

"I only want equality.....That \$34 seemed like a considerable difference in a style of living. It pays a water bill."

* Nathalie Norris, plaintiff

"What we object to is the use of these stereotypic classifications, even though they might be true.....What I'm saying is that it really doesn't matter what the (statistical) tables might tell you: you should make the decision that we don't use sex as a qualifying factor."

* Dr. Mary Gray, Women's Equity Action League

"We must treat individuals as individuals, not as group statistics."

* Amy Jo Gittler, Attorney for Nathalie Norris

"NOW will mount a major campaign to outlaw all sex discrimination in insurance"

* From a resolution passed by the National Organization for Women, Annual Meeting, October 1982

"They should try to weigh people as best they can as individuals."

* Senator Robert Packwood

Nathalie Norris is the plaintiff in a case now being considered by the United States Supreme Court. She is challenging the right of the State of Arizona to offer a retirement option which pays a larger monthly amount to men than it does to women. The option is part of an overall pension plan which pays an identical base payment to men and women. Among the other options available to Arizona State workers is the choice of a lump sum payment at a certain age. This payment is also identical for men and women. The option which Miss Norris chose is the only option offered by Arizona which does not make identical payments to men and women. It is offered through a private company and guarantees a certain payment to the beneficiary throughout his or her life. Male and female employees of the State of Arizona who freely choose this option make identical contributions to the plan. The monthly benefits differ because the contributions made by the female employees must usually be stretched out over a longer period of time. The total payments are calculated to be equal.

Miss Norris doesn't dispute that women generally live longer than men (7.6 years longer on average). Her contention is that she as an individual woman might not live as long as most women and therefore she should not be receiving lesser monthly payments. She is joined in her argument by her attorney, Amy Jo Gittler, Senator Packwood (who introduced S. 324 in the United States Senate to ban the consideration of sex related characteristics by the insurance industry) and by other feminists such as Dr. Mary Gray of the Women's Equity Action League and the National Organization for Women (NOW).

One additional aspect of the feminist argument for abolishing sex-based actuarial considerations is the claim that other characteristics such as lifestyle can be substituted. According to Barbara Lautzenheiser, President of the Society of Actuaries, the possible substitutes are already factored into the rate setting calculations and so substitution is not possible.

The feminist contention that individuals should be treated as individuals and not groups attacks the very basis of the insurance industry. There is no disputing that some individuals do not exactly match the expectancies for their particular group, but

insurance companies are constantly striving to refine their techniques in order to more accurately predict what each individual's experience will be. However, grouping individuals with similar significant characteristics is absolutely essential if insurance is to be offered. As George Bernstein, a representative for several insurance companies says, "Insurance would never have developed if every driver had to be evaluated on the basis of his or her own experience or if the price of annuities or life insurance could only be set after individual experience had developed through the death of the insured."

There is an inconsistency in the feminists arguing that treating individuals as part of a group is not fair while they simultaneously argue for a different grouping system. At its core, the feminists argument against the present insurance practices is simply that we should not permit any consideration of the differences between men and women no matter how real or significant the differences are. They offer no case that women are being injured by the present system. In fact the evidence indicates that they are benefitting from it. They simply object to the recognition of the differences between men and women.

**ACCIDENT RECORDS BY SEX
and ANNUAL MILEAGE**

Annual Mileage	MALES			FEMALES		
	Average Age	3 Yr Average Mileage	Acc. record	Average Age	3 Yr Average Mileage	Acc. record
Up to 2,499	49.0	1,480	.163	42.2	1,495	.079
2,500 - 4,999	49.1	3,445	.268	41.7	3,323	.103
5,000 - 7,499	46.6	5,872	.223	*41.5	5,562	.152
7,500 - 9,999	44.4	8,274	.229	41.7	8,185	.179
10,000 - 14,999	41.9	11,240	.271	40.4	11,026	.242
15,000 - 19,999	40.3	15,860	.319	39.1	15,652	.249
20,000 - 24,999	38.9	20,638	.345	41.1	20,839	.299
25,000 - 29,999	39.4	25,437	.353	38.5	25,537	.277
30,000 - 39,999	38.6	31,982	.350	38.6	32,041	.273
40,000 - 49,999	37.9	41,592	.430	31.6	42,506	.318
50,000+	38.4	70,616	.563	31.4	58,926	.318
Total	41.8	17,671	.305	41.3	7,211	.163

THE IMPACT OF SEX-NEUTRAL INSURANCE LEGISLATION ON WOMEN

A fact that is not widely publicized is that Senator Packwood's legislation (and its companion House bill, H.R. 100) would also prohibit consideration of sex-related characteristics in auto, life, and medical insurance. In these cases the distinctions based on sex are entirely in the favor of women. Premiums for auto, life and medical insurance are significantly less for women than they are for men, a reflection of the lower claim rate for women.

THE MICHIGAN EXPERIENCE

In 1980 the Michigan legislature required that rate tables for insurance be unisex; separate rates for men and women were abolished. The effect was shocking. Citizens Insurance raised its rates by as much as 327% for female drivers. While that was the highest recorded increase, the others offered little succor to the woman who was forced to pay hundreds of dollars more for auto insurance in the name of equal rights: Allstate's increase was 242%, State Farm's 160%, Trans America's rate increase was 140%. While the cost of auto insurance for women was increasing in virtually every category as a direct result of the sex-neutral requirement, men were reaping an unexpected benefit. Auto insurance rates for men fell in almost every category by as much as 58%. The practical result of this so-called "women's rights" legislation was a state mandated transfer of wealth from women to men.

Life insurance would follow the same pattern if sex-neutral insurance rates are mandated. Barbara Lautzenheiser, Senior Vice President of the Phoenix Mutual Life Insurance Company, testified before Congress that such legislation would immediately raise the cost of, for instance, a one year term, \$50,000 policy for a 25 year old non-smoking female by \$150. A 45 year old female could expect her bill for the same insurance to rise by \$1,750 per year.

THE MASSACHUSETTS EXPERIENCE

While prohibiting the use of sex related characteristics in the establishment of insurance rates can control rates, it can do nothing to control costs. As in any other kind of economic activity, the market will find ways to cope with the distortions caused by government interference. In 1977 the Massachusetts Insurance commissioner prohibited the use of sex-based auto insurance rates. Because of this regulatory interference female drivers were overcharged and male drivers were under charged in relation to their risks as drivers. Female drivers became very attractive customers while male drivers, particularly young male drivers, were avoided. The result was that 90% of auto insurance for young male drivers has been forced into the state supported residual market reinsurance facility, where the costs are subsidized by the taxpayer.

The most drastic rate increases will fall upon single women. According to the United States Department of Labor, 40% of the women in the labor force are single, and 58% of the minority women in the labor force are single. Prohibitions against the use of sex-based insurance rates will harm these women - the single women, the minority women - the most. Such legislation will dramatically increase the cost of the auto insurance she must have to support herself and her dependents.

To be fair, it must be mentioned that such laws will benefit women in certain instances. Only 39% of working women are covered by any sort of pension plan. Of this 39%, 95% are covered under defined benefit plans which provide equal monthly benefits to men and women. The remaining 2% of working women are not covered under defined benefit plans and therefore receive lesser monthly payments or are required to make larger monthly contributions. It is this 2% of working women who will benefit from sex neutral insurance

laws at the expense of all other women who must purchase auto or life insurance.

Clearly sex neutral insurance laws will penalize women in the auto and life insurance markets. Such laws will effectively transfer wealth from women to men and can hardly be considered to be in the best interests of women.

BUSINESS, STATE AND LOCAL GOVERNMENTS, AND SEX NEUTRAL INSURANCE

The advocates of sex-neutral insurance are pushing for legislation that would be retroactive. Both Senator Packwood's bill and H.R. 100 would require that companies pay out pension benefits based without regard to sex even though premiums have been collected in consideration of the sex related characteristics. The effect on private businesses and state and local governments is potentially devastating. According to Miss Alair Townsend, Budget Director for New York City, the cost to the city to comply with the retroactive provisions of sex-neutral legislation would be \$862 million. The FY 84 cost would be \$82 million, an amount which could be used to hire 3,000 police officers or firefighters or up to 5,000 parks workers. And, according to state law, benefits will have to be raised to which ever schedule is highest, the men's or the women's, and premiums charged to the worker will have to be adjusted to the lower level. The net result is that \$660 million of the \$862 million additional expense imposed upon New York City in the name of "women's rights" legislation will go to benefit men. Similar ratios of cost and benefit will occur throughout the country.

The most recent legislative sessions in the States have resulted in many and widespread cuts in social services. In order to meet the increased costs of unisex insurance, State and local governments may be forced to make further cuts in such programs as health, energy and housing assistance for the poor. The result will be a double blow to the single women heads of household who are already struggling. Many of these women will not be able to cope with increased cost of their auto and life insurance and the decrease in aid available to them.

For insurance companies the solution will not come so easily. In fact, many insurance companies will be forced into bankruptcy while many businesses will no longer be able to afford to offer pension plans. Insurance companies are required to hold a percentage of the worth of their outstanding policies in reserve to guarantee that they will be able to make their payments. Because sex-neutral legislation would require them to increase the cash surrender value of women's insurance policies, and decrease the premiums charged to men, the amount they will have to hold in reserve will greatly increase. The necessary reserve increase ranges from 33% of one company's net worth to 170% of the net worth of another! The actual effect of sex-neutral insurance legislation will be to force some insurers out of business! Those that can survive will have no choice but to pass their increased costs onto their policy holders.

Businesses which provide pension plans will be also be adversely affected. Such businesses established their plans in accord with actuarially sound practices. Either they made identical contributions for their male and female employees and developed payment schedules that reflected the different life expectancies of men and women, or they assessed women a larger contribution in order to provide equal monthly pension benefits. In either case the pension plans have been structured to provide for the real costs of offering the retirement plan. Sex-neutral legislation will drastically alter this practice and impose enormous and unplanned for costs upon already struggling businesses. Either the monthly benefits for women will have to be increased or the premiums for men will have to be decreased, depending on the structure of the individual firms pension plan. In

either case the firm will be forced to make much larger payments than it planned for or it will have to make its planned payments with much smaller contributions from its employees. These retroactively mandated costs will simply be too much for many firms to bear and they will be forced into bankruptcy. Those that do survive may conclude that the costs of providing unisex pensions are too great and simply discontinue a valued employee benefit.

Some businesses offer defined contribution plans which specify the contribution to be made by the firm but make no guarantee of the amount to be paid upon retirement. These plans are favored by business because they enable a business to strictly control pension costs. Employees on the other hand do not prefer defined contribution plans because they provide no assurance of amount of payment and so prevent the employee from making retirement plans. Firms which offer these pension plans will not be affected by the legislation. It is likely that most firms will change to defined contribution plans if sex-neutral insurance becomes the law, thus eliminating a valued employee benefit.

It is clear that the passage of legislation prohibiting the use of sex related characteristics in insurance rates will have a tremendously adverse impact on business. The final result will be bankruptcies and the elimination of valued pension benefits for employees. Interestingly enough the U.S. Senate sponsor of such legislation is simply not concerned about the broader implications of the legislation he is proposing. When asked by Jim Lehrer, Associate Editor of the MacNeil-Lehrer Report, whether he had "explored the impact that your bill would have not only on the city of New York but all other cities around the country and state governments and everybody else" the Senator's reply was "Interestingly, in fairness, we have not."

CONCLUSION

The insurance industry does distinguish between men and women; it recognizes real differences in the cost of providing protection to men and women. This differentiation on the whole, is immensely beneficial to women. All women purchasers of life and auto insurance benefit from the lower rates that are the result of this industry practice. Currently, according to the American Council of Life Insurance, women are charged only 72% as much as men for term life insurance while the cost to insurers is 84% as much as the cost to insure men; women are charged 9% more than men for annuities, the cost of which is 14% greater than for men; women are charged 44% more for disability income insurance when the costs are 66% greater. Prohibition of this practice will penalize the single working woman who can least afford it and impose enormous additional costs on businesses and governments. Clearly there is no justification for the charge that women are economically disadvantaged by the insurance industry's recognition of the differences between men and women. Those who advocate the abolition of this practice are pursuing ideological goals behind a smokescreen of civil rights and economic justice.

The views expressed in this paper are solely those of the author, J. Daniel Bray (Research Director, ALEC) and do not necessarily reflect the opinions of the Chairman, Officers or Members of The American Legislative Exchange Council. This report was prepared solely for informational purposes. "Unisex Insurance", The State Factor is copyrighted by the American Legislative Exchange Council

U.S. SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D.C., May 17, 1983.

Hon. BOB PACKWOOD,
Chairman, Senate Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Enclosed are letters which I have received from Harlan Mathews, Tennessee State Treasurer, and John C. Neff, Commissioner of the Tennessee Department of Insurance, regarding S. 372, the Fair Insurance Practices Act.

I would appreciate your comments as to the potential impact of S. 372 on Tennessee's state and local retirement plans. In addition, I would like to request that these letters be made a part of the hearing record.

Thank you for your attention to these requests.

Sincerely,

HOWARD H. BAKER, Jr.

Enclosures.

STATE OF TENNESSEE,
TREASURY DEPARTMENT,
Nashville, Tenn., May 5, 1983.

Hon. HOWARD H. BAKER, Jr.,
Hart Senate Office Building,
Washington, D.C.

DEAR SENATOR BAKER: This letter is to call your attention to S. 372. My comments address the effect of the proposed legislation on state and local retirement plans. Commissioner John Neff of the Tennessee Department of Insurance also plans to communicate his concerns to you regarding the legislation and its effect on the insurance industry. We join together in requesting that you review the dramatic and undesirable impact and proposed legislation will have on the taxpayers of the State of Tennessee.

The proposed legislation addressed the issue of sex discrimination in the calculation of annuities payable by a retirement plan. The issue of sex discrimination in retirement plans has been addressed by the courts for some years, the initial case being *City of Los Angeles, Department of Water and Power v. Manhart*, 435 U.S. 702 (1978).

The Tennessee Consolidated Retirement System as well as most other state retirement plans adhered to the court decisions and took action to eliminate the use of sex distinct annuity calculations. Since we are a defined benefit plan, the basic benefit is the same regardless of sex; however, when a retiree chooses to reduce his benefit in order that a benefit will be paid to his survivor, option factors are applied. Effective for all persons retiring after July 1, 1982, the TCRS adopted unisex mortality factors which eliminated any sex discrimination in the calculation of optional benefits. The mortality factors were blended in a manner so that the cost to the retirement plan and ultimately the taxpayers would not be increase. This action was taken voluntarily in an effort to comply with the court cases as well as to insure that the taxpayers would not be adversely affected.

S. 372 would require the retroactive application of sex-neutral mortality factors and further require that all benefits be "topped up" to the highest level. In the TCRS this requirement would affect some 6,000 pensioners and would increase the cost of the retirement plan by approximately \$25,000,000. Depending upon the interpretation of the bill, persons who retire in the future could be affected with a resulting cost of an additional \$100,000,000.

As you can see, the taxpayers could be required to provide an additional \$125 million to address the issue of sex discrimination in the calculation of annuities, an issue that we have taken the initiative to resolve for all future retirees at no additional cost to the taxpayers.

We would request that you review the information attached and vigorously oppose any application of S. 372 to public retirement plans which have previously taken action to eliminate sex discrimination in the operation of the plans.

Respectfully,

HARLAN MATHEWS,
Chairman, Board of Trustees,
Tennessee Consolidated Retirement System.

Attachment.

STATE OF TENNESSEE, TREASURY DEPARTMENT,
CONSOLIDATED RETIREMENT SYSTEM,
Nashville, Tenn., March 23, 1983.

Mr. JOSEPH P. McALLISTER

*Consulting Actuary, Bryan, Pendelton, Swats and McAllister,
Nashville, Tenn.*

DEAR MR. McALLISTER: The Nondiscrimination Insurance Act has been introduced in the U.S. House of Representatives and its companion bill, The Fair Insurance Practices Act in the U.S. Senate. It is my understanding that this legislation would be applicable to state and local government pension plans.

The information I have obtained about the legislation indicates that all benefits must be calculated using "gender-neutral" mortality tables and that such calculations should be retroactively applied to all retirees. The legislation further states that no benefits are to be reduced indicating that all benefits should be increased to the amount paid to the favored sex.

As you are aware the Board of Trustees of the Tennessee Consolidated Retirement System adopted unisex mortality factors for use in computing benefits payable under a survivor option, the only TCRS benefits which are affected by the use of sex-distinct mortality tables. This action which was effective July 1, 1982 was taken in order to comply with several court cases, most notable being the *City of Los Angeles Department of Water and Power v. Manhart*, wherein the use of sex distinct tables in the computation of retirement benefits was found to be unconstitutional.

Although the courts have directed that "gender-neutral" tables be developed and implemented, the courts have never awarded retroactive benefit increases to the plaintiffs. The Board of Trustees felt that by adopting the use of unisex mortality tables for persons retiring after July 1, 1982 that we would be in compliance with the law without adding an additional burden to the state's taxpayers.

We are requesting that you review H.R. 100 and S. 372 in order to determine the financial impact that the retirement system would have to endure if this legislation is enacted. We intent to communicate this information to the Tennessee Congressional delegation.

Due to the urgency of the situation we request that you provide us with this information at your earliest convenience.

Sincerely,

STEVE ADAMS, *Director, TCRS.*

ACTUARIES AND CONSULTANTS,
BRYAN, PENDLETON, SWATS & McALLISTER,
Nashville Tenn., April 4, 1983.

Mr. STEPHEN D. ADAMS,

*Director, Tennessee Consolidated Retirement System,
Nashville, Tenn.*

DEAR MR. ADAMS: I have reviewed the provisions of H.R. 100 as they might affect the liabilities of the Tennessee Consolidated Retirement System (the "TCRS"), and therefore affect the taxpayers of the State of Tennessee. Although the language of the bill is not completely specific on the point, I understand that it is generally accepted that the TCRS, as well as other pension programs sponsored by state and local governments, would be covered by the provisions of the bill and its companion Senate bill.

Basic benefits provided by the TCRS are not and never have been based on sex. An individual's basic benefit is based on the individual's salary history and length of service, and on no other factors. Therefore, the provisions of H.R. 100 clearly would not affect the calculation of an individual's basic benefit.

As is customary among defined benefit pension plans, the TCRS includes provisions allowing a retiring individual to elect to receive his retirement benefits in a form other than the standard life annuity. Under this options, a retiree elects to receive a smaller initial monthly benefit in order that payments will be continued throughout the lifetime of a designated beneficiary (the "contingent annuitant") if the retiree dies before the beneficiary. The amount of the reduction is based on the ages of the individuals involved, and is calculated so that the value of the optional benefit is equal to the value of the basic benefit as of the date of election.

Prior to July 1, 1982, the amounts of optional benefits under the TCRS were based on "gender-related" mortality tables which reflected the fact that a group of females of a specific age will on the average, live longer than a group of otherwise similar males of the same age. Effective July 1, 1982, the Board of Trustee modified the basis for calculation of the amounts available under these options, so that the

option amounts were no longer related to the sex of the retiree or the contingent annuitant.

The change was made by basing the new option factors on a "blended" mortality table which took into account the likelihood of option elections by males and females. The effect of the adoption of such a table is that the present value of the options which are expected to be elected in the future, in the aggregate, will be the same as the present value of the basic benefits which would be payable if no options were elected. In other words, males and females are treated the same, but the plan sponsor (in the case, the State of Tennessee) bears no extra cost because of the election of the options.

Since the TCRS has already adopted this "gender-neutral" approach, it is unclear how the provisions of Section 4(c) of H.R. 100 would apply to it. A straightforward reading of the language of the Bill is that (assuming that the TCRS is a "contract of insurance"), the "contract" as it presently exists does not discriminate, and therefore is in compliance, at least for those retiring on or after July 1, 1982. However, the language of Section 4(c)(2) indicating that insurers "may increase but not decrease the periodic . . . payments under such existing contracts" if necessary in order to be in compliance raises questions in two areas:

1. If it is somehow interpreted that the "blended" approach which the TCRS has used since 1982 is not permissible, but that factors for future retirees must be calculated separately (i.e., as though separate "gender-related" tables were still being used) and each retiree be paid the highest optional amount available under any of those "gender-related" tables, a substantial liability would be created for the State.

I studied this question when the Board of Trustees was considering the move to a "gender-neutral" basis, and concluded that if this "best-of-all-worlds" approach were required, the State would assume an additional liability of approximately \$210,000,000 if all retiring males elected an option. At that time, the most recent available data indicated that approximately 40 percent of all male retirees elected an option. However, since the effect of a "best-of-all-worlds" option would be to increase substantially the option amounts available to males, it does not seem unreasonable to assume that under such an approach at least 50 percent of retiring males would elect an option, leading to an increase in the State's liability somewhat in excess of \$100,000,000.

If a "blended" mortality table is utilized as the basis for the option calculations, this basic principle remains in effect so long as the expected proportion of males and females elect options. However, when the "best-of-all-worlds" method is utilized, the underlying mathematical equivalence is totally lost; suddenly, optional benefits in the aggregate are worth more than basic benefits, and the sponsor has assumed an unintended additional liability. This seems to me to be an illogical extension of the concept underlying the Bill that the sexes be treated in a non-discriminatory manner.

The retroactive application of such a principle is particularly disturbing, since it increases the plan sponsor's liabilities by legislative fiat without allowing him any way to accumulate the assets needed to discharge that liability.

The application of these principles to the fairly complicated subject of annuity options may be a little esoteric and difficult to comprehend, so let me give a simpler example. If instead of sex discrimination in annuity options we were discussing age discrimination in life insurance, the bill would prohibit the practice of basing insurance premiums on the age of the insured.

- (1) The "no discrimination" approach would mean that in the future 20-year-olds and 60-year-olds would have to pay the same price per thousand for life insurance;

- (2) The "best-of-all-worlds" approach would mean that, since 20-year-olds have in the past been able to purchase life insurance for less than 60-year-olds, in the future all ages will be able to purchase life insurance for the rate previously available to 20-year-olds; and

- (3) The retroactive application of the "best-of-all-worlds" approach would mean that premiums would be reduced (with no reduction of insurance) for existing life insurance policies purchased in the past at age 60, to the amount which the premium would have been if the purchaser had been 20 instead of 60 when he bought the policy.

It is obvious, I believe, that such an approach would be illogical if applied to life insurance, but the same misapplication of "non-discrimination" principles would be involved as is now being proposed with respect to sexual "non-discrimination"; the larger percentage change involved in 60-year-olds paying 20-year-old premium rates simply makes the fallacy of the concept more apparent.

2. Section 4(c)(2) of the Bill appears to indicate that, even if the Bill did not apply prospectively, it would apply retroactively to those who retired prior to July 1, 1982

since, as mentioned above, prior to that time retirement benefits were based on "gender-related" mortality tables.

As of the date of the last actuarial valuation of the TCRS (June 30, 1981), approximately 6,000 retired individuals had elected an option which would be affected by this provision. As I understand the Bill, it would be necessary to go back to the date of retirement of each of these individuals, determine the age of the retiree and the contingent annuitant, calculate the largest amount which would have been available to each individual under any combination of the "gender-related" tables then in effect (which normally will be the amount payable to a female retiree with a male contingent annuitant), and increase future payments to this maximum amount. Thus, benefits for male retirees and for female retirees with female contingent annuitants would be increased, generating an additional liability, while benefits for female retirees with male contingent annuitants would not be changed.

I have estimated on a very broad basis the effect of such recalculations on the liabilities of the TCRS with respect to those who were retired on June 30, 1981. It appears that moving to a "best-of-all-worlds" basis for future payments to those who had elected options would increase the System's liabilities by approximately \$25,000,000.

Let me emphasize that, in my opinion, the "best-of-all-worlds" approach is a total perversion of the mathematical principles on which the granting of optional benefits is based. A retirement plan is not required to make optional benefit forms available; it does so simply because such optional forms may be helpful to the individual retiree by tailoring the pattern of future benefits to the particular needs of the individual—for example, to allow for the continuation of benefits in the event of the premature death of the retiree while he or she is responsible for the well-being of a surviving spouse, child, or other relative. It has never, to my knowledge, been intended that the election of such optional benefit patterns should generate additional cost to the plan sponsor; the principle has been that the plan sponsor would make these options available and would be neutral (since no additional cost would be involved) as to which of the options the retiring participant decided was most suitable for his particular circumstances.

Please let me know if any additional information is needed.

Sincerely,

JOSEPH P. McALLISTER, F.S.A.

STATE OF TENNESSEE,
THE DEPARTMENT OF INSURANCE,
Nashville, Tenn., May 10, 1983.

Hon. HOWARD H. BAKER, Jr.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BAKER: I have been in contact with Harlan Mathews, our State Treasurer, concerning the problems raised by H.R. 100 with the State Retirement System. I believe Mr. Mathews is addressing those problems in a separate letter to you. I would like to take this opportunity to express the concerns on the part of the Insurance Department as to the effect H.R. 100 will have on Tennessee policyholders.

Of chief concern to Tennessee is the preemption of the regulation of insurance by the federal government. While it is true that in the past the federal government has set out specific guidelines through the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 101 et seq., and the power given to the Secretary of Health and Human Services to approve or disapprove medicare policies, 42 U.S.C. 1395 S.S., this is not the approach of H.R. 100. Instead, this legislation would require the states to follow civil rights cases, which do not allow for the unique aspects of the insurance business. The nature of insurance is that individuals are classified and risk assigned according to statistical evidence. Enactment of this legislation would preempt the use of such statistical classifications for risk. Congress has already decided through the McCarran-Ferguson Act that regulation of insurance should be left with the states. The enactment of H.R. 100 while preempting the state regulation in this field, would force the state to implement insurance regulation on the basis of civil rights case law, and not through specific guidelines which have been enacted in any previous preemption.

Another important problem which is of great concern to the Insurance Department would be the retroactive provisions of H.R. 100, which require insurers to equalize benefits where there has been no collection of premiums for such equaliza-

tion. This retroactive application would cause solvency problems with many insurers, and might cause the failure of some companies.

One of the big myths used by proponents of this legislation is that the insurance industry used sex to discriminate against women. Sex has been used by insurance industry, as is age and other classifications, to fairly classify women to establish their risk factor. The type of unisex rating which is contemplated by H.R. 100 would increase auto insurance costs for younger women by requiring them to subsidize their more reckless male counterparts. According to an independent analysis by the American Academy of Actuaries, H.R. 100 would require an increase in auto insurance premiums for women of \$700,000,000 annually, and an increase in life insurance premiums for women of \$360,000,000 annually. H.R. 100 would require that insurers ignore statistically significant differences in claims and benefit costs between men and women when determining the appropriate premiums to be charged.

Insurance by its very nature is the assessment of a risk factor when deciding a charge for a premium. By attempting to outlaw any discrimination between classes of individuals for such insurance, a uniform rate for all individuals would be established, regardless of the nature of the risks involved. This State has passed regulations outlawing the use of sex or marital status as the sole criteria in assessment of classifications. Allowing for statistically proven differences in risk between men and women enables a company to fairly assign risks, and results in lower costs for women rather than higher costs. Enactment of H.R. 100 while objectionable for all the reasons previously stated, is particularly objectionable in that it will do the greatest harm to the individuals for which it is supposedly trying to address a wrong, that is women themselves.

Sincerely yours,

JOHN C. NEFF, *Commissioner.*

THE COUNCIL OF THE CITY OF NEW YORK,
CITY HALL,
New York, N.Y., May 24, 1983.

Hon. ROBERT PACKWOOD,
U.S. Senate, The Capitol,
Washington, D.C.

DEAR SENATOR PACKWOOD: Enclosed is a copy of a letter sent to Congressman John Dingell and the New York members of the Committee on Energy & Commerce regarding H.R. 100, a bill prohibiting discrimination on the basis of sex in insurance and government pensions which is also being considered by your committee.

I thought it might be useful to you to know that a majority of my City Council colleagues (29/44),¹ as well as City Council President Carol Bellamy, have endorsed this letter and the sentiments it expresses. I hope you will be able to refer to this information when marking up your own bill.

If I may be of further assistance to you, please contact me. Thank you for your consideration of this matter.

Sincerely,

CAROL GREITZER, *Councilwoman.*

THE COUNCIL OF THE CITY OF NEW YORK, CITY HALL

This is to urge your support of H.R. 100, a bill prohibiting discrimination on the basis of sex in insurance and government pension plans, and scheduled to come before the Committee on Energy and Commerce on May 10 or 11.

Some of us have been personally affected by such discrimination in New York City's pension plans, and consequently involved in *Women in City Government and Linda Zises v. The City of New York*, a case which has been in the courts for nearly eight years. As you know, the District Court ruled in favor of the plaintiffs in 1981, but no remedy has yet been agreed to. The decision was made on the basis of the Supreme Court ruling, in *The City of Los Angeles Department of Water and Power v. Manhart*, that Title VII banned the use of sex-based actuarial tables in such programs. H.R. 100 is needed to outlaw similar discrimination in insurance policies, as well as to state conclusively that sex-based discrimination in government pension plans is illegal.

¹ Council Member Robert Steingut has resigned his office since indicating his support for the contents of this letter to become Chairman of the New York State Workman's Compensation Board, making the count 28 of 43 plus the Council President.

It is true that there are actuarial distinctions between men and women, as a class, but there are also less favorable life expectancies for members of certain races, for heavy smokers, for the obese, and for other groups. Yet, only sex-based differences are considered in insurance and pension plans. This clearly amounts to discrimination against women, and, in the case of some insurance policies, against men. Moreover, female government employees, like their sisters in the private sector, have often been, and in some cases still are, victims of salary discrimination, as the recent CUNY decision demonstrates. Even when men and women do receive equal pay for equal work, women tend to be employed in the lowest paying jobs. They are also likely to stay "in grade" for a longer time before being promoted. All these factors mean that total earnings by age 65 are usually considerably lower for women, leading, inevitably, to lower pension credits. Discrimination in pension payouts, in addition to previous job and salary discrimination, thus puts women in double economic jeopardy.

Discrimination of this sort is obviously outrageous, and must be corrected. Some cities that currently practice discrimination may find its removal costly, but it must be done. Further—it must be accomplished not by dragging all pensioners down to the lowest common denominator, but by raising payments for the victimized groups. As members of the New York City Council, we cannot support discrimination in the name of frugality.

THE NATIONAL ASSEMBLY OF NATIONAL VOLUNTARY HEALTH AND
SOCIAL WELFARE ORGANIZATIONS, INC.
Washington, D.C., May 31, 1983.

Hon. BOB PACKWOOD,
*Chairman, Committee on Commerce, Science and Transportation,
U.S. Senate, Washington, D.C.*

DEAR SENATOR PACKWOOD: On behalf of the Pension Plan Committee of the National Assembly of National Voluntary Health and Social Welfare Organizations, Inc., I would like to express our appreciation for this opportunity to bring to your attention the adverse impact which certain provisions of S. 372 (the "Fair Insurance Practices Act") will have on the member organizations of the National Assembly. Attached is a statement which explains the National Assembly's position in greater detail and which we request be included in the record of your Committee's deliberations on the bill.

As the attached statement explains, the National Assembly is an association of voluntary, non-profit organizations concerned with providing a variety of human support services. Among the members of the National Assembly are organizations such as the American Red Cross, the U.S.O., the Boy Scouts of America, the Girl Scouts of the U.S.A., and the YMCA (with whose Retirement Fund I am affiliated). Besides these organizations, the National Assembly is comprised of many other, in most cases less well-known, organizations providing volunteer services to Americans. In addition, the National Assembly is joined in its statement by the National Health and Welfare Mutual Life Insurance Association. The Association is an independent, non-profit, tax-exempt insurance company which was established to provide pension and other employee benefit services to non-profit, charitable, health and welfare organizations.

The National Assembly fully supports the goal of S. 372 to prohibit sexual discrimination and thereby to ensure sexual equality in retirement and other employee benefits. However, we are very concerned over the method to be used to remedy the effects of any existing discriminatory practices. The provisions requiring the increase of all benefits to the level enjoyed by the advantaged sex ("topping up") will impose substantial additional and unanticipated costs on plan sponsors, particularly if those provisions are applied to benefits already earned or accrued. As our statement points out in greater detail, these additional costs will have a unique and very severe financial impact on the member organizations of the National Assembly because the organizations are non-profit agencies which rely for their funding on voluntary contributions. They have no "customers" to whom they can pass on the increases in their operating budgets. Thus, any increase in costs associated with employees' retirement plans will result in a corresponding decrease in the dollars available for the human support services which the agencies were created to deliver.

We strongly urge you and the members of your committee to provide some alternatives to "topping up" as a mechanism for remedying any existing discriminatory practices in the provision of employee benefits. For example, permitting the use of unisex mortality tables will result in a middle ground benefit level for both men

and women, rather than a windfall for either sex. In addition, any remedy should be applied prospectively, that is, only in regard to benefits accrued after the effective date of the Fair Insurance Practices Act.

If you have any questions regarding the position of the National Assembly, or would like any additional information, please contact our counsel, Theodore E. Rhodes (862-2405) or Kathleen A. Bauer (863-2043) of the firm of Steptoe & Johnson Chartered in Washington, D.C.

Very truly yours,

HAROLD C. SMITH,
Chairman, Pension Plan Committee.

Attachment.

STATEMENT OF THE NATIONAL ASSEMBLY OF NATIONAL VOLUNTARY HEALTH & SOCIAL WELFARE ORGANIZATIONS, INC.

The National Assembly of National Voluntary Health & Social Welfare Organizations, Inc. is pleased to present its views regarding S. 372 (the "Fair Insurance Practices Act"). The National Assembly fully supports the goal of S. 372 to ensure equality between the sexes in retirement and other employee benefits. However, this statement will focus on certain unique problems which will be faced by member agencies of the Assembly if those provisions of the bill which require "topping up" of benefits paid by employee benefit plans to the benefit levels of the advantaged sex are enacted as proposed.

The National Assembly is an association of voluntary organizations concerned with providing human support services. Membership in the Assembly is open to health and social welfare agencies that are national in scope, have broad voluntary lay citizen participation, are supported largely through voluntary public contributions, and are recognized as non-profit organizations under Section 501(c)(3) of the Internal Revenue Code. Through its member agencies, which represent thousands of local affiliates in virtually every state, it has a membership of, or provides direct services to, more than 50 million individual Americans. Several of the member agencies that might be most familiar to you are the American Red Cross, Boy Scouts of America, the Girl Scouts of the U.S.A., the U.S.O., the YWCA, and the Cultural Institutions Retirement System (which represents many major museums and daycare centers). There are many more.

In furtherance of their primary activities in the area of human services, member agencies of the National Assembly must retain professional staffs to provide support and continuity for their large complements of unpaid voluntary workers. Therefore, these agencies must maintain a variety of retirement programs covering, in aggregate, tens of thousands of employees in their national headquarters and local field office staffs. The Pension Plan Committee of the Assembly is comprised of the managers of these retirement programs who share mutual interests and concerns regarding both the management and the regulation of private pension plans.

The National Assembly is pleased to have the National Health and Welfare Mutual Life Insurance Association join with it in support of this statement. The Association is an independent, non-profit, tax-exempt company established to provide pension and other employee benefit services to non-profit, charitable, health and welfare agencies. A major portion of the approximately 3,500 organizations serviced by the Association is made up of relatively small charitable agencies that lack the staff resources to administer these benefit services themselves. Although not a member agency of the National Assembly, the Association has joined the Pension Plan Committee as an associate member in view of its common interests in matters affecting the retirement programs of non-profit agencies. Since most members of the Committee represent the larger pension plans of agencies that provide community services on a national level, the Association brings the important added perspective of the smaller non-profit agencies to the activities of the Committee.

Although there is substantial diversity among non-profit agencies in their organization, purposes and methods of delivering services, as well as comparable diversity in the design of their retirement programs, they do share important similarities. Among the most basic similarities is the fact that their substantial reliance on voluntary public contributions makes them uniquely vulnerable to increases in retirement plan funding requirements and in operating costs. Agencies that rely on voluntary public contributions for their operating revenues and provide essentially no-cost services to communities and individuals are unable to "pass-through" increased costs to the marketplace. Instead, any increases in operating costs mean fewer dollars available to provide much-needed human services to Americans. Thus, anything which can be done to eliminate or minimize increases in employee benefit costs for

non-profit agencies will result in residual benefits not to a board of directors or a cadre of stockholders, but to a broad spectrum of individuals and communities. The provisions of section 4 of S. 372 which are intended to rectify the effects of discrimination resulting from the widespread use of sex-based mortality tables in the insurance industry will have the effect of increasing the costs of employers of providing retirement benefits for their employees. The increases in benefit costs will be substantial if the "topping up" provisions are applied to benefits which are already being paid to retirees or to benefits which have already been earned by plan participants.

The National Health & Welfare Mutual Life Insurance Association has reviewed the effect which such topping up provisions will have on the benefits which it pays to annuitants from defined contribution plans and which it will pay to participants who have earned deferred annuities. The Association underwrites almost 6,000 retirement plans covering over 135,000 employees of charitable health and welfare organizations. These plans include deferred annuities, individually designed plans, master defined benefit and defined contribution plans, and a tax-deferred annuity program. As of the end of the last year, there were 18,134 women receiving annuity benefits under defined contribution plans underwritten by the Association. These annuitants were receiving total annual benefits amounting to \$7,614,432, necessitating a reserve of \$76,496,971. If topping up is required for all benefits in course of payment, the face amount increases in the annual payments to these annuitants will be \$882,000, necessitating a corresponding increase in reserves of \$8,864,825, an 11.6 percent increase. Another \$4,072,787 increase in reserves will be necessary to account for increases in the benefits ultimately to be paid under deferred annuities due to participants in defined contribution plans. Furthermore, an annual increase of \$168,000, necessitating a reserve increase of \$1,601,220, will be required in order to "top up" joint and survivor annuities now being paid under both defined benefit and defined contribution plans underwritten by the Association. Thus, the Association will have to immediately increase its reserves for these items alone by approximately 9.3 percent. If the reserve increase diminishes the Association's surplus below its required minimum, the Association will have to recoup the increase by assessing its members, i.e., its policyholders which are non-profit organizations engaged in providing much-needed social services.

There are several alternatives to the topping up provisions of S. 372 which would place less severe economic burdens on plan sponsors. The alternatives are:

- (1) the application of topping up only to benefits earned after the effective date of the Act;
- (2) the use of unisex mortality tables for all benefits to be paid after the effective date of the Act; or
- (3) the use of unisex mortality tables for all benefits earned after the effective date of the Act.

The National Assembly does not have statistics regarding the additional costs which will be incurred by all of its members under each of the alternatives. However, the Department of Labor conducted a study of the short-term costs to the pension system of the various alternatives for equalizing pension benefits. This study was submitted to the Subcommittee on Commerce, Transportation, and Tourism of the House Committee on Energy and Commerce by T. Timothy Ryan, Jr., then Solicitor of Labor, when he appeared before the Subcommittee on February 22, 1983. The short-term costs vary considerably, from approximately \$1.2 billion for the topping-up provision currently in S. 372 to approximately \$85 million if unisex mortality tables are used for future accrued benefits. The National Assembly believes that the added costs for its members of the various alternatives would be proportionately similar, although of a much lesser magnitude since they represent only a small portion of the pension universe on which the Department of Labor's study was based.

As indicated, the National Assembly fully supports S. 372's goal of eliminating sexual discrimination in the provision of retirement and other benefits to its employees. However, we strongly urge Congress to assess carefully the economic consequences of the methods which it may prescribe to achieve this goal. It appears that there are two important national policies to be balanced: first, the elimination of any laws or practices which result in sexual discrimination and, secondly, encouraging employers to provide retirement benefits for their employees. In regard to organizations such as the members of the National Assembly, a third national policy also enters into the equation: facilitating the provision by the private sector of human support services formerly supplied by federal, state or local governments. It appears that the only reasonable reconciliation of the three policies is to adopt a method for implementing the goal of S. 372 which minimizes the economic impact of the law as much as possible while eliminating sexual discrimination in the future.

The use of unisex tables, rather than topping up, and the application of such tables only to benefits accrued after the effective date of the Fair Insurance Practices Act will answer these needs. We strongly urge that section 4 of S. 372 be so modified.

THE NATIONAL FEDERATION OF BUSINESS AND PROFESSIONAL
WOMEN'S CLUBS, INC. OF THE UNITED STATES OF AMERICA,
Washington, D.C., June 3, 1983.

HON. BOB PACKWOOD,
*Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, D.C.*

DEAR SENATOR PACKWOOD: I understand that at your hearing on May 19, a question was raised about the position The National Federation of Business and Professional Women's Clubs, Inc. (BPW) has taken on insurance discrimination. I thought it might be helpful to you to know how the legislative positions of BPW are developed. A National Legislative Platform, detailing BPW's legislative priorities for the coming year, is adopted each year by delegates assembled in Convention. These delegates represent every state in the Union and most of BPW's 3,500 clubs. The Platform which is presented to the Convention for adoption is developed by a platform committee composed of one representative from every state federation. This committee considers resolutions from state federations and drafts the Platform.

This year, in an attempt to make our platform selection process even more democratic, we are asking each of our state federations to rank issues of concern in priority order at their state conventions. Of the twenty states which have submitted a priority ranking to date, all but three have listed the elimination of discrimination in insurance as one of the top five priority issues. BPW's National Legislative Platform, which is the base for all legislative policy decisions, is clearly a document which reflects the concerns of our more than 150,000 members.

I have submitted the above information to you to assure you that we are representative of both our own members and of the millions of American working woman who wish to see sex discrimination in insurance eliminated. (The issue of insurance discrimination has been on BPW's legislative agenda for over ten years.) If you have any questions, please do not hesitate to contact us.

Sincerely,

JERI S. LIBNER,
National President.